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Maritime Dicæologie; 2

O R, c7

SEA-JURISDICTION

O F

ENGLAND.

IN THREE BOOKS.

The first setting forth the Antiquity of the Admiralty in *ENGLAND*.

The second proving the Ports, Havens, and Creeks of the Sea to be within the Jurisdiction of the Admiralty.

The third shewing that all Contracts concerning Maritime Affairs are within the Jurisdiction of the Admiralty, and there cognoscible.

By JOHN EXTON,
Doctor of Laws, and Judge of his Majesty's
High Court of Admiralty.

L O N D O N:

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HENRY BENNET.

MAR 10 1916

TO HIS
ROYAL HIGHNESS

JAMES

Duke of *York* and *Albany*,
Earl of *Ulster*, Lord High
Admiral of *England* and
Ireland, etc. Constable of
Dover Castle, Lord Warden
of the *Cinque-Ports*, and
Governor of *Portsmouth*, etc.

YOUR Royal Highness having
been graciously pleased to con-
stitute me Judge or President of the
High Court of Admiralty, I held it
my duty (according to my poor abi-
lity) to assert the just Jurisdiction
thereof, against those undue encroach-
ments and usurpations, whereby the
power of the Lord High Admiral hath
been heretofore, and is at this present
a 2 straight-

straightned, in decifion of matters,
 relating to Maritime affairs; where-
 fore having fome time fince in thofe
 fat and diftracted times, beftowed
 fome labour in fearching and perufing
 fuch of the Records of our own, as
 well as Foreign Nations as I could
 meet with, wherein the juft extent of
 the Admiral's Jurifdiction is fufficient-
 ly and undeniably evidenced, together
 with the neceffity of deciding all con-
 troverfies about Maritime affairs, ac-
 cording to the ancient Sea customs, and
 the reafon and directions of the Civil
 and Maritime Laws, I held it no lefs my
 duty to recollect the faid Papers, and
 reduce them into fome method for the
 clearing thofe objections which hither-
 to have been and ftill are made ufe of,
 either againft the antiquity or extent
 of the Lord High Admiral's Jurif-
 diction in Maritime cafes, or againft
 the decifion of them by the ancient
 Sea customs, and the rules of the Ci-
 vil Law: And as I have obferved this
 Nation hath happily flourifhed a long
 time

EPISTLE DEDICATORY. V

time, under that happy Government of all Land Affairs by it's municipal Laws, practised in the Common Law Courts; so hath it no less prospered and been enriched in it's Navies, Trade and Commerce under that exact Government which hath ordered and guided all Maritime busineses and Sea affairs, by the Civil and Maritime Laws and Customs (corresponding, agreeing, and according with the Laws of Foreign Nations, being suitable to the nature and negotiations of the people that are subject to them) exercised and practised in the High Court of Admiralty: The design therefore that I propound to myself in the publishing this Treatise is, to shew how necessary and fitting it is, that the power and jurisdiction of this Court should be no longer subject to such interruptions; and how expedient it now is, that the rights and privileges of the same should be observed and kept, and the Laws and ancient Customs thereof, whereby all Commerce

and Navigation is upheld, should be precisely and strictly preserved and maintained: That all which may appear, I have set forth the antiquity of the Lord Admiral's Jurisdiction here in *England*, by ancient Records of the Tower: Next the Jurisdiction itself, and the extent thereof, as also the necessity and necessary use of it in divers respects. In all which I have endeavoured neither to eclipse the honour, power, or least right of the Municipal Laws of this kingdom, nor in any sort to detract from the renown of the reverend and learned Professors thereof, but hope I have manifested that the upholding of both Jurisdictions, and restraining each of them to its proper limits and confines, will be more advantageous to this kingdom and the inhabitants thereof, than the suffering either of them to swallow up or devour the other. Be pleased therefore to receive this unpolished work from the hand of your Servant as the same is dedicated unto the protection of your Royal Self.

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T H E

INTRODUCTION.

ALTHOUGH the soil of this Kingdom of *England*, wherein we are so happily and in so plentiful a manner planted and settled, be so blessed with all sorts of Fruits, that it hath been accounted and esteemed as the very seat of the Goddess of Fruit: *Quod solum ejus ab omni frugum genere ita beatum, ut Cereris sedem fuisse dixerit Orpheus*: And been as it were the Barn and Storehouse of victual and provision for the Western Empire; *Occidentalis Imperii quasi horreum et cella penuaria fuerit*; and doth abound with an innumerable multitude of tame and profitable Cattle, flowing with milk, and full freighted, and laden with Wools, that it seemeth not to need the help of any other Countreys or Colonies, nor any of their Commodities: Yet let us withal consider how requisite and necessary the mutual Correspondency, Commerce and Trade hath
been

been, and is, for the exchange of such Goods and Commodities as this aboundeth withal in so plentiful a manner, and may well spare, and others want, for those which those others abound withal in as plentiful a manner, and may spare and this wanteth ; and what plenty, store, and encrease hath arisen, and doth arise and accrue to all, and how much they have been and are enriched thereby.

And it is not unknown, what succour and relief this Nation, though so plentiful, hath oftentimes had and received from foreign Nations, by the importing even of such Commodities as this Nation hath at other times abounded withal, and doth generally in a most plentiful manner abound : And the like succour no doubt other Nations have received from hence, and one from another. Hence it is that *Pliny* saith, *συνάλλαγμα ἀλλαγῇ ἐπιμυζία*, *mercium commutatio victus causa inventa fuit* ; this Commerce and Trade of exchanging Commodities for Commodities was invented for man's livelihood : *diversas igitur gentes commercio ita miscuit ut quod genitum esset usquam, id apud omnes gentes natum esse videretur* : Commerce therefore hath so mingled divers Nations

Nations one with another, that whatsoever is begotten any where should seem to be brought forth every where.

And it is most of all to be considered, if this Correspondency, Commerce, and Trade, should not be upheld, maintained, and continued, how the Shipping, Navage, and Navigation of this Kingdom (the wooden Walls thereof) should be sustained, since the benefit and profit raised and gained by such Commerce and Trade, is the only incitement and encouragement to Merchants and Owners of Ships to build them, and unto all Masters of Ships, Pilots, and other Mariners to sail, serve, and be employed in them, and to others to addict themselves to that course of life, to be trained and brought up therein, for the obtaining of skill, knowledge, and perfection in Navigation.

And we may well be assured, that if this benefit should cease, few or no Ships at all would be built by private Men in the time of peace, and but few by the public for the service of war in the time of war; and those built in the time of peace would lie by the walls

walls and rot, their Tackle and Furniture be decayed and wasted, their Captains, Commanders and Mariners unaccustomed to the seas and navigation, or else unskilful and unexperienced in sea affairs, by which means this Nation would lie open to the violence of other Nations who envy it's prosperity.

If then the loss or discontinuance of the Trade, Traffic, and Commerce of this Kingdom with other Kingdoms, Nations and Commonwealths, may prove so dangerous, how necessary will it be to keep and preserve the Laws of Nations Civil and Maritime, the very Laws of Traffic, Commerce and Trade, whereby the same (with all requisites thereunto appertaining) are upheld and maintained compleat and perfect, which is a point I must leave to be considered by my loving Friends the Merchants of *England*, Owners of Ships and Vessels, and Sea-trading men, that will spare but so much time as to read over this small Treatise.

T H E

T H E
Maritime Dicæologie;
O R,
SEA-JURISDICTION.

C H A P. I.

The Antiquity of the Admiralty in England set forth so far as to prove the same to have been settled and continued in and before Edward the Third's time, to whose time the Statute of the 13 of Ric. 2. referreth, argued from the Antiquity of the High-Officers that exercised that Jurisdiction in those times, and from their Grants and Patents.

F O R the Antiquity of the Admiralty some have been of opinion, that it had its rise, and received its first beginning but in Edward the Third's time; but from whence this opinion should arise, or what should beget the same, I know not, unless its exceeding Flourishing at that time set a greater mark upon it, than all its proceedings and employments for a long time before had done.

Some have derived its original from Edward the Third, upon this ground, that he in the 49th year of his Reign, caused an Inquisition to be taken at *Quinborough*, by persons which he caused to be called from several maritime Parts of this

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Land

Land thither, to consider of and agree upon such articles, as should be necessary and fit for the Enquiry, and making presentment of all such crimes and offences as should be committed upon the Seas, or upon any Port, Harbour, Haven, or Creek of the Sea, conceiving that thereupon the Admiralty Court was then set up, and not before.

To take away this last concept in the first place, and remove this opinion, I shall from that 49th year of *Edward* the Third, look backwards unto what was done in all his time, and then by degrees derive its original far further upwards, by so many Admirals Patents, and Records of the Tower (which I have seen and perused) as shall only serve to set forth, and prove the continued settlement of that Jurisdiction all his time, and from many years before, without endeavouring a perfect Catalogue of all such Admirals upwards, as I find amongst those Records mentioned, and set forth, it making little to my intent, or purpose, more than to enlarge that which I study to be brief in.

But he that will be curious therein, may find as well those that were both in and before *Edward* the Third's time briefly set down in *Sir Henry Spelman's Glossary* ^a under the title ADMIRAL, pag. 16. as as those that have been from the said *Edward* the Third's time unto the 16th year of King *James*, from which time the rest that have been since constituted, are easily collected. Those then which serve to my purpose are these.

^b I find that before the 49th of *Edward* the Third, a Patent of that Office of Admiral was granted to *Guy de Bryenne ad partes Occidentales*, anno 45 Ed. 3.

^a Spelm. gloss. verbo ADMIRAL. p. 16.
Ed. 3. 1. part. pat. m. 1.

^b Rot. Ann. 44.

^c And

Or, *Sea-Jurisdiction.*

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^c And another to *John Nevill ad partes Boreales, anno 44 Ed. 3.*

^d And another to *John Nevill* and *Guy de Bryenne* then Knights the same year, both joyned together in one Patent.

^e And another to *Robert de Ashton ad partes Occidentales, anno 43 Ed. 3.*

^f And another to *Nich. Tamworth ad partes Boreales, anno eodem.*

^g And another to *Ralph Spingewel* for the keeping the Town of *Dover*, the Cinque-Ports, and the Admiralty *ad partes Australes, Boreales, et Occidentales, anno 38 Ed. 3.*

Next I shall here set forth a Patent at large, granted to *Robert de Herle, anno 35 Ed. 3.* by which patent it will plainly appear, that the Office of the Admiral was then accounted an ancient Office, and had an ancient, different, and distinct Jurisdiction from the Municipal Laws of the Land. The Patent in the Tower Roll is thus set forth: *Rex universis et singulis Vicecomitibus, Majoribus, Balivis, Ministris, Dominis, Magistratibus, et Marinariis navium ac aliis fidelibus suis, tam infra libertates, quam extra, ad quos, &c. Salutem. Sciat is quod nos de circumspectione et fidelitate dilecti et fidelis nostri Roberti de Herle plenius confidentes, constituimus ipsum Admirallum nostrum omnium flotarum navium Australium, Borealiū, & Occidentaliū, quamdiu nobis placuerit, Dantes ei plenam tenore presentium potestatem, audiendi querelas omnium et singulorum de hiis quæ officium Admiralli tangunt, & cognoscendi in causis maritimis, & justitiam faciendi, et excessus corrigendi, et Delinquen-*

^c Rot. Ann. 44 Ed. 3 parte paten. ^d Rot. Ann. eodem & eadem parte paten.

^e Rot. Ann. 43 Ed. 3. 1. parte paten. m. 15. ^f Rot. Ann. 38. Ed. 3. 1. part. pat. 10.

m. 3. 4. ^g Rot. Ann. 35. Ed. 3. 1. part. pat. m. 32.

tes juxta eorum demerita castigandi, puniendi, incarcerandi, et incarceratos qui deliberandi fuerint, deliberandi, et omnia alia quæ ad officium Admiralli pertinent faciendi, et ad alios, quos ad hoc idoneos noverit, quoties idem Robertus vacare non poterit, ad omnia præmissa, et singula faciendum loco suo substituendum et deputandum, prout ei melius videbitur expedire ; et ideo vobis mandamus, quod eidem Roberto, et ejus deputato in præmissis omnibus et singulis faciendis, et exequendis, intendentes sitis, et respondentes, quotiens, et prout idem Robertus vel ejus deputati vobis vel alicui vestrum fecerint, vel fecerit ex parte nostra ; in cujus &c. T. R. aquid Westmonasterium.

per ipsum Regem 26 die Jan.

^h Now amongst those that have been of opinion that the Jurisdiction of the Admiralty had its beginning in *Edward* the Third's time, I find Mr. *Lambard* to be one, who in his *Archæon.* saith, that he thinketh that the decision of maritime causes was not put out of the King's House, and committed over unto the Admiral, until the time of *Edward* the Third ; and his reason is, for that (as he saith) he never heard mention of it before the second year of *Richard* the Second, who in his 13th year made a Statute to restrain the Admiralty from meddling any further than it used to do in the time of his Grandfather *Edward* the Third ; where he heard mention of it in the second Year of *Richard* the second he mentioneth not.

But he must give me leave, (who by this Record last mentioned, and by divers others have found mention made of it before such time as he heard mention of it, and for divers other reasons) to believe this Court to be far more ancient than he thought it to be.

^h *Lambard Archæon. tit. ADMIRAL, p. 42.*

For if this Record be well observed, it will plainly appear that the Office of the Admiralty was an ancient Office at the time of the Grant, which may easily be gathered out of these words: *Dantes ei plenam tenore presentium potestatem audiendi querelas omnium & singulorum de hiis quæ officium Admiralli tangunt, &c.* and likewise out of these, *& omnia alia quæ ad officium Admiralli pertinent, &c.* from whence it appeareth that there was then a known Office of the Admiral, not then lately instituted and ordained. And it will more plainly appear, if we look further back to the Grants and Patents made unto others throughout this King's Reign and other Kings Reigns before him, which being deduced out of the Tower Records, will shew this Office and Place to be of a far greater Antiquity: I shall therefore steer my course by degrees backwards towards the confines of the Antiquity of this Jurisdiction, although hopeles to arrive there; yet I shall go as far by the antient Records as will serve for my purpose.

ⁱ Next before this *Robertus de Herle, John de Bello-Campo frater Tho. de Bello-Campo, Com. Warwicensis, Eques primæ foundationis ordinis Periscelidis constitutus fuit Admirallus ad partes tam Boreales quam Occidentales Angliæ, 10 Julii anno 34 Ed. 3. qui fuit eodem tempore Dom. Gardianus quinque Portuum, constabularius Turris Lond. & Castri Dover, & obiit in possessione dictorum munerum 2 Decembris eodem anno.*

^k *Robertus Morley, Baro de Hengham constitutus fuit Admirallus ad partes Boreales 5 Martii, anno 29 Ed. 3. & Johan. de Bello-Campo fuit eodem tempore Admirallus ad partes Occidentales, qui eandem dignitatem obtinuit anno 24 Ed. 3.*

ⁱ Rot. an. 34 Ed. 3.

^k Rot. an. 29 Ed. 3.

¹ Wiliel. de Bohun Comes Northampt. *constitutus fuit Admirallus ad partes Boreales* 8 Martii anno 25 Ed. 3. *Et eodem tempore Hen. Dux Lancast. constitutus fuit Admirallus ad partes Occidentales, Et proximo sequente anno in ejus loco Tho. de Bello-Campo Comes Warwicensis.*

^m Robertus de Ufford Comes Suffolciæ, *quum constitutus fuisset Admirallus ad partes Boreales* 8 Maii, anno 18 Ed. 3. *continuatus fuit Admirallus* 23 Feb. anno 20 Ed. 3. *Et Rich. fil. Alani Comes Arund. qui constitutus fuisset Admirallus ad partes Occidentales* 23 Feb. anno 19 Ed. 3. *continuatus fuit Admirallus* 23 Feb. anno 28 Ed. 3.

ⁿ Robertus Morley Baro de Hengham *fuit Admirallus ad partes Boreales in anno* 13 Ed. 3. *Et in anno 16 ejusdem Regis per literas patentes constitutus Capitaneus, Et Admirallus singulorum portuum, Et locorum per costam Maris versus partes Boreales quamdiu* &c. T. R. *apud Eltham* 3 Aprilis.

Et Johannes de monte Gomeri eodem tempore constitutus fuit Capitaneus, Et Admirallus, &c. tam Quinque portuum, quam aliorum portuum, Et locorum per costam maris versus partes Occidentales, quamdiu, &c. T. R. apud Eltham 3 Aprilis.

^o Walterus de Manney *in anno* 11 Ed. 3. *fuit Admirallus ad partes Boreales, ut constat, quod eodem anno idem Walter. Manney tam nuper constitutus Capitaneus Et Admirallus, &c. Hugonem Venables, Et Michaellem Chylde conjunctim Et divisim loco suo deputavit &c. Et Rex ibi confirmavit* T. R. *apud Weston.* 5 Sept.

Et eodem anno Barthol. de Burghersh fuit Capitaneus Et Admirallus ad partes Occidentales.

¹ Rot. an. 25 Ed. 3. ^m Rot. an. 20 Ed. 3. ⁿ Rot. an. 16 Ed. 3. 1 part. paten. mem. 26. ^o Rot. an. 11 Ed. 3. 3 part. paten. mem. 3.

^p Johannes Normico constitutus fuit Capitaneus & Admirallus omnium portuum & locorum, &c. versus partes Boreales, 2 Jan. anno 8 Ed. 3. Et Rogerus de Hengham constitutus fuit Capitaneus & Admirallus, &c. tam Quinque portuum, quam aliorum portuum & locorum, &c.

^q And in the first Year of the same King's Johannes Parbroun constitutus fuit Capitaneus & Admirallus, &c. versus partes Boreales, per ipsum Regem & Consilium 21 Aprilis.

Et Wares de Valoniis versus partes Occidentales eodem die.

And these are those Admirals, but not those only (as will hereafter appear) to whose office and power the Patent of Robert de Herle of the 35 of Edward the Third, relateth in the *Dantes ei plenam tenore presentium potestatem audiendi querelas omnium & singulorum de hiis quæ officium Admiralli tangunt, & cognoscendi in causis maritimis, & justitiam faciendi, &c. & omnia alia quæ ad officium Admiralli pertinent faciendi, &c. prout in dictis literis.*

^r These had their Patents from the same King, as appeareth by their Patents themselves in the Tower Rolls: *Rex omnibus ad quos, &c. salutem: Sciatis quod nos de fidelitate probatâ, & circumspetione providâ dilecti & fidelis nostri Rogeri de Hengham plenariè confidentes, constituimus ipsum Rogerum Capitaneum & Admirallum, &c.*

^s And so had the last mention'd, constituted in the first Year of his Reign: *Rex omnibus ad quos, &c. salutem. Sciatis quod nos de circumspetione & fidelitate dilecti nobis Johannis Parbroun confidentes*

^p Rot. an. 8 Ed. 3. 2 part. pat. m. 5. ^q Rot. an. 1 Ed. 3. 2 part. paten. m. 23. ^r Rot. an. 7 Ed. 3. 2 part. paten. m. 5. ^s Rot. an. 1 Ed. 3. 2 part. paten. m. 23.

constituimus ipsum Capitaneum & Admirallum, &c. T. R. apud Rockſborough 2 die Jan.

And by the ſame Patents they have *potestatem caſtigandi, puniendi &c. prout juſtum fuerit & hætenus conſuevit, &c. in cujus, &c. T. R. apud Stanford 21 Aprilis, & mandatum eſt omnibus & ſingulis, &c.*

Now to remove the firſt opinion, it is plain hereby that this Office of the Admiral had not its beginning in *Edward* the Third's time, the Patents themſelves all of them, as well theſe of the firſt year as the other, determining the Power thereby granted with *prout juſtum fuerit, & hætenus fieri conſuevit* : ſo that it plainly appeareth by the words *hætenus conſuevit*, that this had been a ſettled Office before the granting of this very Patent in the firſt year of *Edward* the Third : nor was this, and thoſe of his time the firſt Patents that determined the Admirals power, with a *Prout juſtum fuerit, & hætenus fieri conſuevit*.

^t For in the 20th year of *Edward* the Second I find *Robertus Leybourne conſtitutus fuit Admirallus verſus partes Boreales : Et Nicholaus Kyrel verſus partes Occidentales anno 19 Ed. 2.* both which Patents conclude with the ſame words ; *prout juſtum fuerit, & hætenus fieri conſuevit*.

^v In the 15th year of the ſame King's Reign *Robertus Leybourne conſtitutus fuit Admirallus navium Regis ſuper mari Occidentali, & Robertus Battalius, (alias Batallus) de ſingulis portibus verſus Auſtrum.*

Then do I find ſome ſtyled Admirals, and others ſtyled and conſtituted by other titles.

^t Rot. an. 20 Ed. 2. paten. m. 15. Rot. an. 19 Ed. 2.
1 part. paten. m. 12. ^v Rot. clauſ. 15 Ed. 2. pat.
15 Ed. 2.

* As *John Atby* styled by the title of *Capitaneus Navigii*, in the 10th year of *Edward* the Second.

Et Nich. Kirel constitutus fuit Admirallus, &c. versus partes Occidentales.

† And in the 35th year of *Edward* the First, viz. *Symo de Monte acuto assignatus fuit Capitaneus & Gubernator Flotæ, Navium, &c.*

‡ And in the year next preceding, viz. in the four and thirtieth year of *Edward* the First, *Gervasius Alard constitutus fuit Capitaneus & Admirallus Flotæ, Navium, Quinque Portuum, & aliorum Portuum à portu Dover per Costram maris versus partes Occidentales, usque in Cornubiam, atque totius Comitatus Cornubiæ.*

And *Edwardus Charles versus partes Boreales usque ad villam de Berwick super Tweed, & ejusdem villæ.*

§ *Johannes Bottetort constitutus fuit Custos regis portuum maritimorum versus partes Boreales.*

¶ *Willielmus Leybourne constitutus Capitaneus marinariorum, &c. Idem constitutus fuit Admirallus Angliæ.*

Now though *Mr. Lambard* did think the decision of Maritime causes was not put out of the King's House until *Edward* the Third's time, because (as he saith) he found no mention of an Admiral before *Richard* the Second's time; yet doth it plainly appear by the beforementioned Patents, that there were several Admirals, even up unto the three and twentieth year of *Edward* the First. Though some of them went without that title,

* Rot. an. 10 Ed. 2. 1 part. pat. m. 22. † Rot. an. 35 Ed. 1. pat. m. 38. ‡ Rot. an. 34 Ed. 1. pat. m. 21. § Rot. an. 25 Ed. 1. 1 part. pat. m. 9. ¶ Rot. an. 25 Ed. 1. clauf. endorf. m. 18. † Rot. pat. 23 Ed. 1. 2 part. pat. Lamb. Archaion. tit. ADMIRAL, pag. 42.

yet had they the same Office, and the same power, which together with the *proudest haftenus consuevit*, wherewith the beforementioned Admirals Patents are terminated and concluded, hath guided me further backwards, and led me to many others of more ancient times, that have exercised that Office under divers other titles, which bear the same signification, though not the same appellation ; nor do these former titles (in my judgment) seem to carry any less power and authority under them, than doth the title of Admiral, or *Capitaneus & Admirallus* ; but seem rather to have conveyed unto the Admirals so styled, which have succeeded in that Office, such power and authority as they have since exercised and used.

And here I shall set forth the Parties that formerly bore this Office, and by what names and titles they bore the same, before the title of Admiral was added thereunto.

^d In the two and twentieth year of the said King Edward the First's Reign, *Willielmus Leybourne constitutus fuit Capitaneus nautarum & marinellorum, Quinque portuum & membrorum eorundem. Et similiter* Jesemuch Bayon Hiberniæ, Walliæ, & *omnium aliorum portuum & locorum in quibus naves & Battalli applicant infra regnum & potestatem Regis, &c.* attested by the King at Westminster the seventh of June.

^e In the 48th year of Henry the Third, *Tho. de Moleton constitutus fuit Custos maris, portuum maritimorum & maritimarum partium* : And in the same Patent, the Barons and Bayliffs of the Cinque-Ports, and all others of or belonging unto the Ma-

^d Rot. Valscoyn. an. 22 Ed. 1. m. 8.
1 part. pat. m. 3.

^e Rot. an. 48 H. 3.

ritimé parts, are commanded to be attending, aiding and assisting unto the said *Tho. tanquam custodi maris, & maritimarum partium*; attested by the King at Canterbury.

^f In the 19th year of the same King's reign *Hammon de Crevequor, & Wolleraudus Tutonick habuerunt custodiam Quinque portuum, cum costrâ maris à portu de Hastings usque ad portum de la-Pool, &c.* And their Patent is attested by the King at Canterbury the 10th of February.

^g In the 9th year of his reign *Richardus Angil-lan constitutus fuit Custos marinæ reg. Norfolciæ, Suffolciæ, cum omnibus pertinentiis suis: sc. Erewell, Grefore, Dunwitch, Gernemouth, and Lynne.* And the King in their Patents doth command all men belonging unto these Coasts, to be attendant and obedient unto them in all things thereunto belonging. The Patent runneth in these general words: *Rex omnibus de costra maris Norfolciæ & Suffolciæ, salutem: Sciatis quod concessimus Richardo Aguillan marinam nostram Norffolciæ & Suffolciæ, cum omnibus pertinentiis suis: sc. Erewell, Oreford, Dunwich, Gernmouth, & Linn, Custodiend. quamdiu nobis placuerit; & ideo vobis mandamus quòd ei in omnibus, quæ ad dictam marinam pertinent, intendentes sitis & respondentes. T. R. apud Westmonast. 3 die Octobris.*

^h In the same year commisit *Johanni filio Roberti & Ohoeli de Insulâ, partes & marinam Com. Northumbriæ custodiend. quamdiu Domino Regi placuerit; & mandatum est Vicecomiti Northumbriæ, quod proclamari faciat per totam Ballivam suam, quòd omnes eis in omnibus quæ ad prædictas partes & marinam pertinent, intendentes sint, & respondentes. T. R. 26 Aprilis.*

^f Rot. an. 19 H. 3. pat. m. 14.
2 part. pat. m. 9.

^g Rot. an. 9 H. 3.

^h Rot. an. eod. H. 3. claus. pat. m. 15.

ⁱ In

ⁱ In his eighth year *commisit* Johanni de Baosis *marinam suam de Cornub. & Devon, custodiend. quamdiu ei placuerit. Et mandatum est omnibus per coastam maris, Cornub. & Devon. quòd ei in omnibus quæ ad marinam illam pertinent intendentes sint, & respondentes. T. R. apud Lond. 7 die Septembris.*

^k *Eodem modo scribitur omnibus de coasta Dorcest. pro Radulpho de Germam, qui illarum partium marinam habuit.*

^l Richardus de Lucy *dicitur habuisse marinam Angliæ 29 Augusti.*

So that it appeareth that those that bore this Office of the Admiral, before that title was used, were sometimes called *Capitanei Navigii*, in respect of the great power they had over all manner of Shipping: for *πλοῖον*, *navigium*, with the *French*, *Toute sorte de navire*; with the *Italian*, *navilo*, *vassello*; with the *German*, *ein jede gattung eines schiffs*; with the *Spaniard*, *nave del navio*, is *omne genus navium quo navigamus*, what sort of ship soever wherewith we sail. *Navigium est genus continens naves, rates, & cæteras species quibus ad navigationem utimur*, saith *Spieg.* And thus shall we find the word used wheresoever we read it: *Jamque qui ædificare velint Fabros & Architectos advocent; Qui navigia mari concedere, gubernandi peritos qui bella moliri, armorum & militiæ gnaros; &, ne singula prosequar, ei studio quòd quis agere velit, consultissimum rectorem adhibeat;* ^m *Cicer. de Nat. Deorum.* So general is the word for all manner of Shipping, that it is in that regard used for Navigation it self: *Sumitur tam pro navigatione ipsa, quàm navi quacunque*, saith *Oldendorp.* And so it is used sometimes in

ⁱ Rot. an. 8 H. 3. 3 part. pat. m. 3. ^k Rot. an. eod. & eod. loco. ^l 2 part. pat. & m. eod. an. ^m Cic. de Nat. Deor. lib. 2. F. de verb. oblig. l. qui Romæ, § 1.

the Civil Law : *Aliis mercibus emptis & in navem missis, ipse in Syriam per navigium proficiscatur.*

Sometimes they were called *Capitanei & Gubernatores Flotarum, Navium*, in regard of their employment, in ordering and ruling of the King's Fleet, employed either against an Enemy actively, or for the defence of the Kingdom whensoever disturbed by an Enemy ; and for his power in gathering together of whatsoever Ships he thought fitting for raising of Navies, or supply of the Defects of those formerly raised, and the like.

Sometimes they were called *Custodes Maritimarum partium*, for that it was his office and duty to see all the maritime parts and borders of the Sea sufficiently provided of all things needful and necessary for the defence of the Nation against a foreign Enemy ; and so likewise furnished with all manner of necessary provisions, for the entertainment of our own Ships, and Mariners, and relief of the King's Friends which should touch there in distress, that his Subjects might receive the like upon the like occasion.

Sometime *Capitanei Nautarum & marinellorum*, for the power that they had over all the sea-faring men, in ordering them, and deciding differences which should fall out amongst them, or between them and others with whom they dealt, or had to do : And as a Captain and Commander ought not to suffer them to wrong any, nor to be wronged by any.

Sometimes *Custodes maris & maritimarum partium*, in regard they were to see to the furnishing of the King's Ships at Sea, with Men, Victual, Tackle, Furniture and Ammunition ; sometimes adding to the strength of the Navy, by furnishing out more Ships from the Ports to the Sea, ready provided with necessaries, such as they found fitting

ing for that service; and sometimes withdrawing, or (if present in the Navy) discharging others as occasion required. And as well to see to the ordering business upon the sea, as upon the Coasts and Borders of the sea.

Sometimes they were styled *Custodes marine Regis*, in respect they had the keeping, ordering, ruling and disposing of all Maritime business, and Sea affairs, which belonged unto the King himself, and concerned his Kingdom's general good, or his Subjects particular benefit and quiet, either amongst themselves, or with Foreigners.

Which Title, as it was the first, I find born by the chief Officers for the ruling and ordering all Maritime affairs, within such limits as were assigned them by the King: so I conceive it comprehends as much power as the title of Admiral; and either of these as much as any of the rest, and indeed as much as all the rest: And yet I conceive too, that any one of the rest intentionally, and as it was used, comprehended as much as either of these: But I shall not here dispute what the power, authority, or jurisdiction of any of these Officers was (which doubtless was the same) but shall defer that to another head more proper for the debate.

I have here, so far as my line would reach, and my small skill in records direct and guide me, followed the antiquity of these highest Sea-officers, wherein, without doubt, I have in my way miss'd many things that might have been pertinent to that I aim at: Yet have I (as I conceive) by records discovered a continued imployment of such Officers, without any intermission, or cessation at all of that Office, even from the latter end of King *Edward* the Third's time, up to the eighth year of King *Henry* the Third: and so I have hitherto
argued

argued the antiquity of the Jurisdiction, from the antiquity of the Officer. What this Jurisdiction anciently was, will hereafter be disputed; in which dispute the antiquity of the Admiralty will be further discovered.

C H A P. II.

That these high Officers and Admirals, or Keepers of the Seas, Sea-coasts and Ports, had like power and authority in them, and over them, as the Keepers and Governors of Land-Provinces had over them; and had their Maritime Laws for guidance of their Jurisdiction, both Civil and Criminal, as well as the other had their Land Laws for the guidance of theirs.

THE next thing I observe, is that the preceding Officers, which this [*prout hactenus*] led me unto, are most of them rendred unto us under the titles of *Custodes*: ^a As *Custos maritimarum partium*; *Custos maris & maritimarum partium*; *Custos Portuum cum costrâ maris*; *Custos marinæ*, *Custos portuum & marinæ*: most of which Officers so styled, which I had formerly met with amongst the Records of the Tower, I met with again in Mr. Selden's book *de Dominio maris*, quoted out of the same Records; who from thence, and some other good and sound reasons there express'd, inferreth *Quod aperte constat Reges Angliæ præfectos constituere solitos, qui mare An-*

^a De dominio maris, lib. 2. c. 14. ubi citat. rot. pat. 6 Johan. Reg. m. 8. & pat. 8 H. 3. part. 1. m. 3 & 4. clauf. 9 Hen. 3. m. 15. pat. 9 Hen. 3. part. 2. m. 9.

glicanum custodirent, seu ejus custodes essent, sive præfecti, non aliter ac Provinciæ cujuscunque terrestris. They were to be keepers of the Seas in such wise, as others were of every Land Province. *Primò autem* (saith he) *mari, maritimæ, & marinæ* (idque ubi his vocibus, non regio solùm maritima, sed ipse etiam Oceanus Britannicus planè continetur (quod non semper fieri fatemur) præficiiebantur qui tuerentur & custodirent nomine custodum (ut interdum) navium, frequentius verò *maritimæ sensu jam dicto.* ^b To which he addeth another further reason, and saith, that *primaria Comitiorum Parliamentariorum ratio anno Regis Edvardi tertii decimo quarto, est ; de treter sur la guard de la pees de la terre, de la marche d' Escoce, & de la mier ; ut tractaretur de custodiâ pacis terræ, & limitis Scotici, & maris :* from whence he observeth, *Quod non alia tutelæ maris quàm telluris seu terrestris provinciæ habebatur ratio.*

And he gathereth further *ex tabulis ejusdem regis Parliamentariis, seu consultationibus ordinum regni,* as he saith, held upon the same matter, *ut dum de la saufegard de la terre, seu custodia seu tutela telluris sive insulæ, & de la saufegard de la mere, seu de custodiâ maris consilium pariter ineunt, tam hujus dominium, quam illius ad regem suum pertinere, à majoribus edocti manifestò testari videantur.*

For (saith he) *non de classe solùm agunt, quâ hostibus per mare resisteretur, sed de ipso mari tuendo, æquè ac de tutelâ insulæ, adeoque de jure in utroque regis avito defendendo,* where he maketh two distinct Dominions of the Land and Sea, and the ancient right of either of them, to be defended and kept ; and there sets forth divers who had the

^b Eodem cap. ubi citat. Rot. Parl. an. 14 Ed. 3. art. 2.

^c Eodem cap. ubi cit. Rot. Parl. 13 Ed. 3. part. 1. art. 6. 9 & 11. & Rot. Parl. 20 Ed. 3. art. 21.

defending and keeping thereof in the second of *Richard* the Second, and in the time of the three *Henries* succeeding him, with many other things there worth noting and observing.

^d He observes further in the same Chapter the common and received acceptance of this term *Custos* amongst the *English* in other Governments, both of this Land, and other Islands, and even at that time when the name or term of *Custos maris* was most frequently used; and he instanceth in the Governors of *Ireland* in the time of King *John* and *Edward* the Third, who were then severally styled *Custos Hiberniæ*.

^e He instanceth likewise in *John* Duke of *Bedford*, and *Humphry* Duke of *Glocester*, who had, one at one Time, and another at another, the Government of *England*, when King *Henry* the Fifth was absent in *France*, who were called *Custodes Angliæ*, quod (saith he) *tum in historiis, tum in tabulis publicis sæpissimè occurrit*.

And likewise in ^f *Arthur* Prince of *Wales*, who was made *Custos Angliæ*, when King *Henry* the Seventh was gone out of *England*.

And in *Peter Gaveston*, who was *Custos Angliæ*, *Edward* the Second being busied in *France*. And also in the Governors of ^g the Isles of *Jersey* and *Guernsey*, who of antient Times were *Custodes* of those Islands, as they are now called *Gubernatores, Custodes*, and *Capitanei*.

And seeing it is so, how can it be (saith he) that we should not think that our Ancestors used under the same notion or term of *Custos & custodia*, the *Custodes Maris*, and the *Custodes Insulæ, &c. Quod*

^d Eod. cap. ubi cit. Rot. Cart. 2. Jo. R. in dorf. & Rot. pat. 17 Jo. ^e Eod. cap. ubi cit. Th. Walling. an. 14. rot. &c. Rot. Parl. 8 H. 5. ^f Rot. pat. 8 Hen. 7. part 8. ^g Ibid. ex rot. pat. 3. Hen. 3.

cum ita sit, quomodo fieri potest ut non eadem notatione vocabuli Custodis & Custodiæ majores nostros usos esse existimemus in Custodis & Custodiæ maris nomine, quâ in Custodia Insulæ, & cæteris jam dictis dignitatibus uti solebant? sc. in hisce omnibus dominium imperiumque singulare præficientis apertissimè ita signatur includiturque, adeo ut non magis auctoritas in personam quæ præficitur, quam rei custodiendæ dominium nomine hoc planè innuatur.

If then there were *Custodes Maris, Marinae, Portuum, & Maritimarum partium*, and that in such manner as of a Land Prince, *non aliter ac provinciæ cujuscunque terrestris*; Then will it necessarily follow that if a Prince, that ever was civilized by the dominion and rule of a Civil Governor or Governors (for by such means and no other are all Nations, Princes, Islands, and the like become civilized and ordered) could not so continue civilized and ordered without Rules and Laws for every man's demeanour to be guided by;

That the Seas, having anciently been used for Maritime affairs, for free and peaceable Traffique, and Commerce, one Nation with another which be friends, at unity, and in concord; and for Martial Fleets and Navies for the defence of every Kingdom against an Enemy: And so antiently under the dominion of Civil Princes (as under their Dominion and Government of a Civil Land Province) must necessarily have had settled and known Laws, suited and fitted for such their Dominion and Government, which could be no other than the Maritime Laws so agreeable unto Sea-affairs, and so commonly and antiently accepted, and agreed unto by most Nations and Kingdoms, which have had such free Traffique and peaceable Commerce upon, and by them, one with another, to guide and direct these *Custodes* in the ministring
of

of Justice in Sea-businesſes, as well as the Governors of Land Provinces have had their Land Laws for the miniſtring Juſtice in Land-affairs. Hence *Spelman* in his Gloſſary, having reckoned up all the Admirals from the eighth year of *Henry* the Third, unto the 16th Year of King *James*, ſaith, *Nos de munere caduco aut extraordinario non agimus, at de ſummo ſtationarioque magiſtratu, qui univerſæ marinæ reipublicæ præeſt, ſuoque foro & ampliſſima juridiſtione tam in cauſis civilibus judicandis, quam in claſſe Regiâ gubernandâ inſignitur.*^h And further ſaith that we had the name of this Magiſtracy, viz. *Cuſtos Maris, Marinæ, & Maritimarum partium* from the *Romans*, as may be gathered from ⁱ*Cicero in Epistol. ad Attic. ubi ait; vult me Pompeius eſſe quem tota hæc maritima ora habeat ἐπὶ τοῦ πορῶν, i. e. ſpeculatoreſ & cuſtodem.*

^h Spelm. ead. pag. ſcil. 16.ⁱ Cicer. Ep. ad Attic. lib.

C H A P. III.

The Beginning of Sea-Laws, and the further Antiquity of Admirals, and their Jurisdiction from thence argued.

^a **D***ionyſius* aſcribeth the firſt making of Sea-laws to the *Phenicians*, ^b*Pliny* to the *Carthaginians*; but, according to the obſervation of moſt Authors out of moſt ancient Monuments, our Sea-laws have had their beginning and original from the Iſland *Rhode*. *Rhodiæ leges navalium*

^a Dion. de ſitu orbis. *Rhodiæ leges diſtinct.*^b Plin. lib. 7. *Naturalis Hiſtoriæ,*

commerciorum, sunt ab Insula Rhodiæ cognominata, in qua antiquitus mercatorum usus fuit : an Island situate in the *Carpathian* Sea, part of the *Mediterranean*, which being but a small Island, but yet very populous, the Inhabitants, yea the very Indwellers thereof chose rather to live by water than by the air, and to seek their subsistence, and provide for their sustenance by constant sayling, and continued navigation ; ^c by which means they encreased their strength, and augmented their power at Sea, to the terrour of all their Enemies, the hinderers of their Traffique, and quelling of all Pirats the disturbers of their peace. They multiplyed their riches with an infinite increase, and advanced their wealth to the very height. ^d And these principal ground-works being laid, and chief foundation settled, that which makes principally to the purpose in hand, they grew so exquisite in their Navigation, so skilfull and cunning in their Traffique, and so expert in the discipline of both, that as time now required, they framed Edicts to be instituted, decreed, and published, to be established and observed for Laws, for the guidance of all men according to the most exact rules of equity in all manner of Sea-busineses ; insomuch that all Cities and Nations near unto them, therein sought knowledge of them ; and to the further encrease of their riches, by a ready and willing tribute, still exchanged wealth for wisdom, and thought not that they paid any what too dear for the gain of such knowledge, and to be directed in the rules of such Discipline and Laws as might settle such a constant determination of every man's just right at all times, in all manner of Traffique, Trading and Employment, upon and by the seas, as the Islanders had :

^c Gell. lib. 7. cap. 3.
cap. 14.

^d Strabo Geograph. lib. 1. 2.

which

which Laws and Discipline did afterwards spread to further Nations, and the very Emperours of Rome did successively refer all seafaring Debates and Controversies to the Decrees, Determinations, and Judgments of the *Rhodian Law*. ^e *Leges nauticas dicimus quas Rhodii condiderunt; quorum disciplinam navalem, &c.* ut Strabo ait, *εὐνομίαν admirablem, omnes populi libenter, etiam Romanus sequebatur.* ^f And *Eudæmon Nicomedienfis* making his complaint to *Antoninus*, thus: *Κύριε Βασιλεῦ Ἀντονῖνε, ναυφράγιον ποιήσατες ἐν τῇ Ἰταλίᾳ διηπάγημεν ὑπὸ τῶν δημοσίων τῶν τὰς Κυκλάδας νήσους οἰκούντων: Domine Imperator Antonine, naufragium in Italiâ facientes, direpti sumus à Publicanis Cyclades Insulas habitantibus.* *Antoninus* answereth thus: *Ἐγὼ μὲν τῷ κόσμῳ κύριός εἰμι ὁ δὲ νόμος τῆς θαλάσσης. τῷ νόμῳ τῶν Ῥοδίων κρινέσθω τῷ ναυτικῷ, &c. τὰτο δὲ αὐτὸ καὶ ὁ Θεότατος Ἀυγύστος ἔκρινεν. Ego quidem mundi dominus: Lex autem maris. Lege id Rhodiâ, quæ de rebus nauticis præscripta est, judicetur, &c. Hoc idem quoque Divus Augustus judicavit.* Yet be there several other titles in the body of the Civil Law, which set forth several Decrees and Laws particular to the Seas, and sea-faring matters to be observed: And *Ulpian*, a Father of the Law, having set down some of them, gives his reason why they should be precisely kept and observed; *Quia* (saith he) *ad summam rem publicam navium exercitium pertinet.* These *Rhodian Laws*, what of them are left and inserted in the *Pandects*, and their defects being supplied by the *Code*, and novel Constitutions, and their Rents repaired by the fair Applications and candid Expositions of the old *Roman Lawyers*, and other authentick Authors, which have since wrote of matters of that nature,

^e F. ad leg. Rhod. in princ.^f F. ad leg. Rhod. l. 9.

still give the rule and guidance to all seafaring business, of what nature soever, throughout all, or well nigh all *Europe*, and have never been opposed, obstructed, or interrupted, but by such as least understood them.

§ And these severally had their original from that Island of seafaring men, though they have been, by successive observations, collected and gathered together, as most just and equal for the determination of every man's just due and right in all their Maritime affairs, whether they concerned complaints, offences Criminal or Civil, Sales or Affecurations of Ships, Accounts, Covenants, or Contracts by Charter-party or otherwise, Exchanges, Freights, Hires, or Money lent upon casualty or hazard at sea, Causes of Reprizals, Letters of Marque, or concerning lading or unlading, and whatsoever other things else among seafaring men, either of one or several Islands or Nations, done or to be done, either on or at the sea, concerning Sea trade.

Now who shall be imagined to have the supreme governance and power over these seafaring men, and the cognizance of their Maritime causes, to judge them according to these Sea-laws established amongst them, and duly to put them in execution ?

Certainly these Laws were hatcht of order, and could not be bred up to disorder: Seamen surely had amongst them a supreme Governor, one or some that swayed and ruled the rest in the composition of them ; and so must they necessarily have in the dispensing of them, and administering justice according to them.

§ Constat. ex legibus ipsis Rhodijs & alijs ex corpore juris collectis.

Now

Now I hope it will not be said that the maritime and seafaring men contrived and made Laws amongst themselves, which concerned themselves, their Traffique, and Trade ; and when they had done, gave them over into the Land-mens hands (which could not possibly understand the grounds and depth of them) with a power to put them in execution, and so give others a power over themselves, which before had nothing to do with them. If they would so have done (which no Man will judge) yet it is not to be believed, that in this Island of *Rhodes* they could, which consisted generally of seafaring men.

Who should then be fit to be chieft in managing these Laws, but such a one as had chiefly a hand, and was most dexterous in making of them : so that I doubt not, but that we may boldly say and conclude, that as these Laws were composed, gathered, and collected by maritime and seafaring men, so were they put in execution by the principal Governor and Ruler of them : and so had they both birth and growth under the jurisdiction, rule, and governance of the chief Captain, Commander and Governor over all these seafaring men and shipping. And as Causes encreased and multiplied, so did the Laws, according to the nature of the Causes ; and as the Causes varied, so did the Laws, untill they required the constant and continual study of such as were to judge by them.

C H A P. IV.

Of the Laws of Oleron, and the Antiquity of the Admiralty argued and inferred from the introduction of them into England.

AS these Sea-laws before mentioned had their beginning, and the government by them, sprang from the Island *Rhodes* upon the *Mediterranean* Sea; so other Sea-laws there are extant, which had their beginning from an Island upon the great Ocean, and it is called *Oleron*, situate on the sea-coast of *France* against the mouth of *Charant*, and the *Maræs*, nigh *St. Martins*, and not farre from the entry of ^a *Garunana*.

This Island likewise consisting altogether of skilfull and experienced men, as did the other, could no more subsist or proceed happily and prosperously in their maritime affairs than could the other, without such government as the other had.

And they being not altogether ignorant of the *Rhodian* Laws, nor yet very perfect in them, and other new differences and controversies arising and supervening, which they could not judge or determine by the *Rhodian* Laws, they observed certain other Rules and Customs together with those Laws, whereby they decided such differences, and determined such debates, as fell out and happened amongst them.

Which Rules and Customs King *Richard* the First, in his return from the *Holy-Land* (having then the Power and Government over that Island

^a Wellwood in præcem.

of Oleron) caused to be interpreted, settled, and published for Laws there; and having so settled them there, and afterwards coming into *England* (if we shall still doubt of the acceptance and settlement of the *Rhodian* Laws here, at or before that time) yet let us not make any question but that he brought those Laws of Oleron hither with him, and here settled and declared them for Laws, for the rule and government of his maritime Subjects, and doing justice amongst all people of what Nation soever, according to those Laws, as will plainly appear out of the Roll of the Articles, upon which the King's Justices in *Edward* the Third's time were to advise: where it is said thus;

Item ad finem quòd resumatur et continuetur ad subditorum prosecutionem forma procedendi quondam ordinata et inchoata per avum domini nostri Regis, et ejus Consilium ad retinendum et conservandum antiquam superioritatem maris Angliæ, et nos offic. Admiralitatis in eodem quoad corrigendum, interpretandum, declarandum, et conservandum leges, et statuta per ejus antecessores Angliæ Reges, dudum ordinata ad conservandum pacem et justitiam inter omnes gentes nationis cujuscunque per mare Angliæ transeuntes, et cognoscendum super omnibus in contrarium attemptatis in eodem, et ad puniendum delinquentes, et damna passis satisfaciendum: Quæ quidem leges et statuta per Dominum Richardum, quondam Regem Angliæ, in reditu suo à terra sancta, correctæ fuerunt, interpretata, & in Insula Oleron publicata, et nominata in Gallica lingua^b la ley Oleron.

Hence as it appears that King *Richard* interpreted, declared, and published these Laws called the Laws of Oleron, in that Island; so doth it

^b Rot. de artic. super quibus Justiciariis Domini Regis sunt consulendi, an. 12 Ed. 3.

plainly

plainly appear that he ordained and established them here, by these Words: *Ad conservandum leges et statuta per ejus antecessores Angliæ Reges dudum ordinata: per ejus, i. e. avi sui, prius nominati*; by his Predecessors; and it doth plainly appear by that in the close, that *Richard* the First must necessarily be one of them. And hence likewise it doth appear, that with the settlement of these Laws, there was likewise a settlement of a form of proceeding according to those Laws: for saith this Record in prin. *Ad finem quòd resumatur et continuetur ad subditorum prosecutionem forma procedendi quondam ordinata et inchoata per avum, &c. hoc est & inchoata resumì, &c.* which must be the construction, as the words following make it plain, which are *ad retinendum et conservandum*: for *retaining* and *conserving* denote something to be retained and preserved that was before. Now for the publishing and settling these Laws, and ordaining a form of proceedings in the prosecution of them in *Richard* the First's time, I conceive I may safely conclude an Admiral and Admiralty Court to have been settled before, and continued at the same time, unto which he added some more exact proceedings, together with these Laws of *Oleron*, as several Statutes are daily added, either in affirmance, or correction of the Common Law; and my reason is because these Laws (without the *Rhodian* Laws, and those other Laws made in supplement of them) are in no wise a complete Law for the guidance and direction of an Admiralty Court. And it may further appear, that unto the settlement of these Laws, this King himself added Ordinances of the Admiralty: one of which I shall here set down, which he made at *Grymsbie*. The Words follow. *Item c. soit en*

^c Lib. nigro Admir. pag. 28.

quis de nefz, qui sont arrestees pour le service du Roy, ou pour autre Raisonable cause per les officiers du Roy, ou de l'admiral, et debrisent l'arrest, et per les quelles avantdictes nefz sont amenez et retainer les mariners qui sont ordinez pour la service du Roy; et si Retraient, et en cas que homme soit endite qui la debruse l'arrest en sa nef arrestee pour le service du Roy, et de ce soit conviite, per xii. il perdra sa nef s'il n'a grace du Roy, ou du hault Admiral. Et pour ce quil a este plusieurs forz debatue en Angleterre pource les arrestees des nefz quant le Roy amande sergents d'armes, ou autre ministres pour arrester nefz alops du Roy, et les Seigneurs des nefz sont venus devant l'admiral et allegment que leurs nefz nestoient mye arrestees ordonne estoit au temps du Roy Richard le premier, à Grymsbie per advys de plusieurs Seigneurs du Royalme, que quant nefz seront arrestees pour service du Roy, que le Roy escripra par ses lettres patentes à l'admiral d'arrester les nefz plus ou moins à la volente du Roy et selon ce quil a besong, et l'admiral escrivera à ses lieutenants de faire de re l'execucion, et la cause estoit pour ce que l'admiral et ses lieutenants sont de record, et puis l'admiral escripra au Roy ou au chancelier d'Angleterre les noms des nefz ainsi arrestees assemblement avec les noms de seigneurs et maistres dicelles, et en tel cas le seigneur de la nef ne le mastre ne viendront pas à dire que la nef nestoit mye arrestee ne a ce ne seront cyz.

The same ordinance being set forth in another ancient French copy of Articles, wherein divers other Ordinances were likewise set forth, was by one Roughton translated into Latin in these words, viz. *Item^a inquirendum de omnibus navibus quæ ad serviendum Domino Regi super mari arrestatæ fuerint, et postea Domini possessores sive magistri dolo*

^a Lib. nig. Adm. artic. 39. pag. 157.

Et fraude a servitio hujusmodi se subtraxerint in deceptionem Domini Regis. Pæna. Qui si inde postea indictati fuerint, Et convicti, super hoc naves sue Domino Regi foris factæ per ordinationem Domini Regis Richardi primi ; Et si Domini, possessores vel magistri hujusmodi inde coram Domino Rege Et Cancellario suo per aliquas allegationes se aut naves hujusmodi excusare voluerint, si Admirallus vel locum-tenentes sui per literas suas patentes de arresto hujusmodi facto fidem fecerint plenior, domini possessores, aut magistri prædicti nullo modo audiri debeant, seu eis fidem quovis modo adhiberi, eo quod Admirallus Et locum-tenentes sui sunt de^e recordo.

This observation may very well be gathered from these Records that *Richard* the First did (doubtless) settle some things in this Jurisdiction, and preserved it during his time : And I may observe further, that the same were continued in the time of King *John*, who likewise added Ordinances unto the said Laws, as may likewise appear by the antient Articles of Enquiry adjoyned unto the antient Statutes of the Admiralty, in one of which I find it thus exprest. *Item^t soit enquis de gardains de ports Et bailliffs de aves qui levent-coustumes de nouvel Et prennent oultra genses coustumes Et amerciemens pour quoy marchants Et mariners se retraient du pais de venir avec leurs marchandises se aucun gardain de port ou baillif deave est indite quil a alleve nouvelle coustume pour son singulier prouffit, ou pour le prouffit de son Seigneur, Et de ce est conviète, il aura l' emprisonnement de demy an, Et le Seigneur fera fin au Roy ou à l' Admiral, Et Combien que gentz d' Angleterre ont mestier de vendre de ses marchandises pour ses vitailles Et pour ses necessaires, Et les*

^e Obs. quod. curia admiralitatis est curia cujus acta & inactita sunt de recordo. ^t Lib. nig. Admir. pag. 31.

gardains des ports voudroient prendre la coustume de toutes les marchandises qui estoient dedens la ditte nef & dire que les marchants avoient de brise la bulk de la nef dont plusieurs marchants eschuent de vendre leurs marchandises a greigneur d'ommage du peuple, sur quoy le Roy Johan feist assembler les admiraulx de North & West & plusieurs autres de son conseil, & ordonna que nul marchant paieroit coustume de marchandises qui nestoient mye vendues, mais de ceulx qui estoient vendues comment quilz soient mis a terre & saucun bailliff face encontre il aura l'emprisonnement d'un demy an, & soite oste de son office pour tous temps & fera fin au Roy detant commeil a ainsi malement pris.

And by Roughton's Latin Translation out of the other antient Articles of Enquiry I find it thus set forth, viz. *Item & Inquir. de portuum custodibus sive aquæ ballivis, qui clamant sive incipiunt de novo novas custumas pro commodo suo proprio sive dominorum suorum, unde naves, & mercatores, portus & loca hujusmodi, una cum merchandis relinquant damno & jacturâ utilitatis Reipublicæ. Pœna. Qui vero Custodes sive Ballivi si indictati fuerint super hoc & convicti, imprisonamentum dimidii anni habebunt: finem nihilominus Domino Regi facturi ad valentiam in hoc casu percepti, ei qui hujusmodi si usui suo proprio convertatur præceptis. Sin autem ad usum dominorum suorum pervenerit, imprisonamentum dimidii anni, ut præfertur, subibunt, & Domini sui de fine veri valoris in hac parte Domino Regi propter hoc respondebunt: & nota quod liceat mercatoribus, necessitate urgente, vendere percellas mercandizarum pro expensis suis, si contingat absque aliquâ custumâ ab eis petendâ vel exigendâ per ordinationem Johannis quondam Regis Angliæ apud Hast-*

ings. *Et si aliqui Custodes vel Ballivi contrar. hinc ordinationi fecerint, imprisonmentum dimidii anni habebunt, & perpetuò ab officio eorum hujusmodi sint suspendendi.* But in King Henry the Third's time it had received so much interruption, that the vigour and force thereof was well nigh lost, insomuch that *Edward* the first was constrained, *inchoatam formam procedendi quandam & ordinatam resumere*, who likewise added certain Ordinances unto the said Laws, as you may read hereafter, which tend very much to the preservation of that Jurisdiction; which work being not fully perfected, soon began to decay in *Edward* the Second's time (whereby it may seem that that Jurisdiction never wanted Enemies) which withdrew its strength, and abated its power, until the necessity thereof appearing in the decay of Navigation, and thereby of Trading and Commerce; and of want of strength in Shipping for the Defence of this Kingdom against foreign Forces and Enemies, still revived it, and restored unto it what had been withdrawn from it, which was the cause (without doubt) that caused *Edward* the Third to proceed in that good work, which his great Grandfather had begun: *Ad interpretandum, declarandum, & conservandum leges & statuta per avi sui antecessores Angliæ Reges dudum ordinata, &c.* as the aforementioned Record sets forth; after which, in his time, it so revived and flourished, that it might very well seem a new birth, from whence some have conceived it to be the first birth, and to have its beginning there, but upon no other ground at all.

I have hitherto only endeavoured the proof of the Antiquity of this Jurisdiction, which will more seasonably follow when I shall inforce the necessary use of the forementioned Laws, those which sprang from the *Rhodes*, suppleted out of several
other

other titles in the body of the Civil Law; and those which have been derived from the antient Statutes of the Admiralty, the Laws of *Oleron*, &c.

Which of these Laws were first introduced into this Kingdom, I shall not dispute; this I shall only say, that they altogether make an exact and complete rule for the government of all sea-faring or sea-trading men and matters, and have been here antiently and frequently used, and elsewhere, throughout most parts of *Europe*.

Divers others have been said (since the making of the *Rhodian* Laws) to have made new Sea Laws; as the Rulers of *Rome* in 1075th year; and since that *Marseilles*, *Genoa*, *Peloponnesus*, *Venice*, *Constantinople*, *Constantine*, and *Barcellona* in several years: But the *Roman* Empire having (not long before that time) been as it were rent and torn in pieces, their Laws for the Land, and Land-affairs laid aside, and their Laws for the government of the Seas quite subverted, and well nigh lost, some of these Nations were constrained to recollect and gather together such parts and Parcels as could be well made up into one body again, with some small cement of our own, and might better be called a reparation of their old Laws, than a structure or edifice of new. For the rest, some say they are additional, some say explanatory to remove false constructions and interpretations, and some say both: but certainly for the most part they are but explanatory; for the other Laws beforementioned, are accounted most authentick, and of chiefest authority throughout all, or the greatest part of *Europe*. But be these additional, yet the addition of Sea-laws to Sea-laws is no diminution of Sea-Jurisdiction, but rather a completing

pleating and perfecting thereof : but the compo-
 sure of new Land-laws, or if it be but the refor-
 mation of old, if those Laws look but toward the
 Sea, they oftentimes cause the discomposure of
 Sea-laws, and unless well look'd unto, the very de-
 struction of that Jurisdiction : but of that more
 will appear by what shall be said hereafter.

And now before I proceed to any other argu-
 ment for the proof of the antiquity of this Juris-
 diction, I shall give you one reason only, which
 induceth me to believe that the same was settled
 long before the time beforementioned, and that
 the *Rhodian* Sea-laws were here settled long before
 the Laws of *Oleron* by *Richard* the First ; and that
 is an Ordinance made by *Henry* the First at *Ip-
 swich*, concerning the banishing a man for Felony
 or Trespass, which I find mentioned in an Arti-
 cle of the antient Inquiry of maritime offences an-
 nexed unto the antient Statutes of the Admiralty
 in the antient Parchment-leaved Book, called the
 Black Book of the Admiralty, where, after the
 manner of such banishment is set forth, it is said :
*Et h ceste ordonnance fut faite primerement à
 Gyspswiz ou temps de primer Roy Henry per les Ad-
 miralx de North & West, & autres Seigneurs ad-
 beirdantz.*

^h Lib. nig. Adm. pag. 27.

C H A P.

C H A P V.

The antient Introduction of the Sea-laws argued, and inferred from the King of England's Dominion over the British Seas.

THAT the Kings of *France* have no Dominion at all over the *British* Seas, or any right or claim thereunto whatsoever, is made plain by what is ^a set forth in the 14th Chapter of the second book *De dominio maris*, written by Mr. *Selden*, who in his 27th and 28th Chapters of the same book proceeds to make further proof thereof, and therein sets forth, that there being war between King *Edward* the First of *England*, and King *Philip* the Fair of *France*, but agreed by Covenant, that all Commerce on both sides shall be free; so that to all Merchants whatsoever there should be *induciæ*, which were called *sufferantia guerræ*: and by both of them Judges were appointed that should take cognizance of all things done against these Truces, and should exercise *judicia secundum legem mercatoriam & formam sufferantiae*. Now it being contained in the first head of this League, that they should defend each others rights against all others, this afterwards was the ground of an action which was instituted in the same Kings time, &c. before these Cognitors chosen by both the said Princes, by the Proctors of the Prelates, Nobility, and high Admiral of *England*, and of all the Cities, Towns and Subjects of *England*, &c. unto which are joined the Proctors of the most maritime Nations

^a Seld. De dom. maris, l. 2. c. 14. 27, 28.

throughout *Europe*, as of *Genoa*, *Catalonia*, *Spain*, *Alemania*, *Zealand*, *Holland*, *Frise*, *Denmark*, and *Norway*, and divers others subject to the *Roman Empire*, against *Reginer Grimbald* the then *Admiral of France* ; for that there being wars between *Philip King of France*, and *Guy Earl of Flanders*, he had taken Merchants upon those Seas in their voyage to *Flanders*, and despoiled them of their goods, whereas the King of *England* and his predecessors, as they all jointly by libel do declare and affirm without all controversy, beyond the memory of man, have had the supreme Government of the *English Seas*, and the Islands thereof : *Præscribendo* ^b *scilicet leges, statuta atque interdicta armorum, naviumque alio ac mercatoriis armamentis instructarum, cautiones exigendo, tutelam præbendo, ubicunque opus esset, atque alia constituendo quæcunque fuerint necessaria ad pacem, jus et æquitatem conservandam inter omnimodas gentes tam exteras quàm in imperio Anglicano comprehensas, quæ per illud transferint ; supremam iisdem item fuisse atque esse tutelam ; merum et mixtum imperium in juredicendo secundum dictas leges, statuta, præscripta et interdicta, aliisque in rebus, quæ ad summum imperium possint attinere in locis judicatis : ad præfecturam Admirallorum à Regibus Angliæ constitui solitorum spectare jurisdictionem ex imperio ejusmodi exercendam.* And he sets forth further in the same Libel, that they do all of them together desire *ut à custodiâ* ^c *liberati, qui carceri ita traditi essent, reddita item bona nullo jure capta, jurisdictionem Admiralli Regis Angliæ (ad quem solum tam ex jure rerum ac loci, quàm personarum hujusmodi jurisdictio attinebat) subirent.* These things I have

^b Seld. De dom. mar. lib. 2. cap. 27. juxta medium.
 cod. loco postea.

^c Id.

cited out of Mr. *Selden*, not only to shew here for my purpose, that the Kings of *England* have had from antient times the power and dominion over the *British* Seas; (for then might I have referred the whole matter to his whole book, which doth so learnedly, so many ways, and by so many several arguments convince in that point) but as well to shew that the Kings of *England's* Admirals have likewise as antiently had jurisdiction under them, over those maritime affairs, which fell *sub isto regimine et dominio*.

And also to shew that so many Nations did concur and agree therein; and that they had *istud regimen et dominium exclusivè* of the Kings of *France* bordering upon the same seas, and of all other Kings and Princes whatsoever; for they all likewise jointly agree, an usurpation, and interruption of the King of *England's* right of Dominion over these Seas by the King of *France*, in granting a Patent of the Admiralty of the Seas unto his Admiral *Reginer Grimbald*, and therefore all jointly proceed in their Petition further: *Ut^f cognitorum sententia Reginerus Grimbaldus ipsa damna Actoribus resarciret, si nimirum solvendo esset; sin minus, tunc ut ad idem faciendum damnaretur Rex Franciæ, qui ejusmodi præfecturæ codicillis eum donasset: Damnis autem resarcitis, tum etiam Reginerus ob fæderis violationem pœnas daret, quales alios à simili facinore in posterum detertere possent.* And in the § 28th Chapter of the same Book, the Libel is set out at large in its own language worthy the reading.

Now all these things considered, shall any man that understands that the Kings of *France* (who have no Jurisdiction at all over these Seas) have so antiently had, and continued their Admirals in

^f Idem eod. etiam loco.

§ Vid. cap. ult. hujus libri.

such power, as the Ediēt by Parliament at *Paris* declares them to have done, so much as imagine that the Kings of *England* (who have had from *Edward* the First's time, and so long before, as that all the aforementioned Nations do jointly acknowledge it to be then beyond the memory of man, the sole rule and dominion of these Seas) should not furnish this his *maritimum regimen et dominium* with those antient maritime Laws before spoken of? Certainly whosoever imagineth this, *concipit istud mare sine navibus, vel naves sine naucleris et navarchis fluctuantes concipit istas*. If furnished with Laws, then consequently with a Commander, Admiral, or Governor, for the dispensing and ministering of Justice among Sea-Traders, and Seafaring-men according to those Laws, else were these constituted and appointed to that use in vain. But I may here rather from the forementioned Libel deduce a proof of the antient settlement of maritime Laws in *England* from the antient acknowledgement of an Admiral's Jurisdiction, than the Settlement of an Admiral and his Jurisdiction from a former Introduction of the maritime Laws into this Kingdom; for an Admiral of *England*, and an Admiral's Jurisdiction are both acknowledged by all the therein mentioned Nations, to have been from that time, (which was *anno 30 Ed. primi*) beyond the memory of man. If then the Admiral had so antiently a Jurisdiction, I must necessarily infer from thence, that so antiently, if not somewhat before, the Laws of the Sea must be settled for his rule and guidance: For they do not say there was an Admiral, for so there might have been, and he have ruled by Arbitrary power: but they say (as before is said) *ad præfecturam Admirallorum à Regibus Angliæ constitui solitorum spectaret Jurisdictionem ex imperio ejusmodi exercendam*. And in their Petition as is before express'd, they desire *ut à custodiâ liberati*

liberati qui carceri traditi essent, reddita item bona nullo jure capta, jurisdictionem Admiralli Regis Angliæ subirent.

Now as δικαιολογία is from δίκη *jus*, so *jurisdictio* is *juris dicendi potestas*. And as δικαστικός likewise from δίκη, or νομικός from νόμος *lex*; so *Juris consultus est is, qui jus consuluit, sive studuit*: and so *juridicus quod secundum jus est*, as *juridicus dies, quo ritè jus dici potest*, and *juridica actio, quæ secundum jus est*: *dicitur etiam juridicus, qui jus dicit, δικαστής, &c.* At *cui jus ignotum est, et ignota jurisdicendi potestas, et cui jus non est jus, non consuluit, et ubi jus non est, ibi jus dici nequit*. No man can have a Jurisdiction or power of declaring the Law, or judging by the Law, to whom the Law is not known; more especially where there is no known Law to declare or judge by. Therefore seeing the Admiral (by common consent, and by so common a judicial acknowledgment) so antiently had a Jurisdiction, necessarily he must so antiently have had certain known and settled Laws to declare and judge by.

I do observe likewise that all the Patents granted unto Admirals, from the 35th of *Edward* the Third upwards, unto the 34th of *Edward* the First, do conclude in binding them to the execution of their office: *prout justum fuerit et fieri consuevit*: And as this *prout fieri consuevit* led me to the more antient Patents, wherein the Officers bear not the title of Admiral, and taught me to understand that the variation of the title did not differ or alter the property in the Office, or the quality of the Officer: so this *prout justum fuerit* shews me as well as the Jurisdiction in the Libel before spoken of did, that the Admirals had then; and *prout hætenus* shews me they had so before, a Law to rule and judge by: For though a pri-

vate man, which is *vir bonus*, a good man which deals uprightly and punctually with all men, is usually said to be *vir justus*, and not improperly when we speak of a private man in his private dealings : And *vir probus et sanctus*, which observeth the Divine Law, is very properly called *vir justus*, when we speak or discourse of matters of Religion, &c. But if we speak of a man set and put in place and authority over others in Sea-affairs, we say he is *vir justus, qui jus observat, et à jure non discedit* ; for δικαιῶ, which signifies *justus*, doth as δικαιολογία and δικαστικός do, come from δίκη *jus* ; and so δικάως from the same word signifieth *legitimè, jure, et juste* ; τὸ δίκαιον signifieth *jus*, the Law itself.

C H A P. VI.

The Antiquity of the Admiralty argued and inferred from the defect and want of ability in other Courts in deciding of Maritime Causes in those antient times.

THAT in those antient times the *Custodes marinæ, & maritimarum partium, &c.* to whose care and trust these *marinæ, and maritime partes*, the Seas, the Coasts and Ports of the Seas were committed, had a great power, and grand authority over all those maritime parts whereunto they were limited, and over all Ships and Shipping, and over all things thereunto belonging, and over all persons whatsoever, who were therein concerned within the said limits, and had power and authority of hearing and determining of all

differences and controversies, which did or might arise concerning the same, may be very well concluded upon this further ground, that no other Court in those days presumed ever to take cognizance of any such matters, or affairs, which I am confident of for the Reasons ensuing: I hope no man will say that maritime causes were tried in the *Heal-gemote*, now called the Court Baron; nor in the *Hundresmote*, now called the Hundred-Court, and is of the same nature with the County-Court; nor yet in the *Schyregemote*, now called the ^b Sheriff's turn, which were the Courts then in use, and had been long before the Conquest, and do yet continue, and never did, nor do assume, nay not so much as challenge any right at all to any such power.

Nor did the King's Court of Exchequer (which was the first Court was settled after the Conquest) ever ^c undertake to deal in Causes of that nature; but (as Mr. *Lambard* determineth this point very well) was only settled and appointed for causes concerning the King's Demeasnes and Receipts. And he saith that after the Conqueror had suppressed the Forces of those that made head against him, here, he settled this Court for his Revenues, and called it his Exchequer, after the name of his Exchequer in *Normandy*; but (saith he) it differed not a little from that; for the Exchequer of *Normandy* had not only the Government of the Revenues of the Duke there, but was also the sovereign Court for the administration of Justice amongst his Subjects, until *Lewis* the Twelfth, King of *France*, *anno* 1499. converted it into a Parliament, consisting of a President and Councillors, and established it at *Roan* in *Normandy*, where it still con-

^b Lamb. Arch.^c Lamb. Arch.

tinueth. But (saith he) this Exchequer in *England* had only the Direction of his Demeasnes and Receipts, and the administration of Common Justice continued still in that high Court of Justice and Equity, which did then and a long time after, as well as before the Conquest follow the King himself; and for proof thereof he quoteth *Gervasius Tilburienfis*, who wrote many observations upon the Exchequer, which he dedicated to King *Henry* the second, and be yet remaining in the receipt under the custody of the Chamberlains of the Exchequer in the black book there.

But because (as Mr. *Lambard* saith) some contended to maintain that the Exchequer was in those days a Court of all sorts of Pleas, for all Subjects whatsoever, and that for the maintenance of their assertion, they do alledge the title of Mr. *Glanvil's* Book in part thus: *Et^d illas solum leges continet et consuetudines secundum quas placitatur in Curia Regis ad Scaccarium*, lest others should hereby be misled, and for this reason think so too, and so be brought to conceive, that before the Court of King's-Bench or Common-Pleas were either of them settled *in certo aliquo loco*, that the Exchequer might have the cognizance of all Causes between party and party, as well maritime belonging to the Sea, and Sea-affairs, and from thence arising; as terrene belonging to the Land, and Land-affairs, and from thence growing; I shall here set down Mr. *Lambard's* answer to that which is alledged for the proof, and maintenance of this assertion, who confidently affirmeth, that the aforementioned words are not the words of *Glanvil* himself, but of the Publisher of his Book in print, which appeareth by what precedeth the words al-

^d *Glanvil. in tit. ejusd. lib.*

ledged in the Title, viz. *Traëtatus de legibus de tempore Regis Henrici secundi compositus ab illustri viro Ranulpho de Glanvile, juris regni, et antiquarum consuetudinum eo tempore peritissimo*; which (saith he) doth plainly shew and bewray that the Publisher spake of *Glanvile* as another man, and which also lived not then, but at another time. And herein he must needs say very truly, for never was there any Author of any credit that ever gave himself this or the like title, or being living, would say that he was *juris regni & antiquarum consuetudinum eo tempore peritissimus*.

And again, they have not taken in all the words of that title, which do follow, but have left out these, viz. *Et coram Justiciariis ubicunque fuerint*; which being so, the King's Bench or Court which then followed the King, must needs be herein comprehended and included, and the whole title being collected thus, *Traëtatus de legibus de tempore Henrici secundi compositus ab illustri viro Ranulpho de Glanvile, juris regni et antiquarum consuetudinum eo tempore peritissimo, et eas solum leges continet et consuetudines secundum quas placitatur in Curia Regis ad Scaccarium, et coram Justiciariis ubicunque fuerint*. Then doth this title make no argument for the proof of their assertion. And so I shall leave the Exchequer then only to govern and rule the King's Revenues, Demeasnes, and Receipts, and such matters as belong only thereunto; and next cast only a glance upon the Justices in Eyre and their Jurisdiction.

The Justices in Eyre are said by *Gervase* of *Tilbury* to be *quasi errantes*, but by *Bracton* are called *itinerantes*: For King *Henry* the Second in the 32d year of his reign divided the Realm into

* Glanv. tit.

six parts, from which the Circuits which our Judges do now ride, do not much differ ; and to every of those parts appointed three Justices, who at their appointed times kept Circuits in their several parts to them limited, and held plea as well of Criminal as of ^f Civil Causes. But Justices of Assises being likewise appointed, whose first office was to take Assises of *Mort d'ancestor*, and *Novel Deseisins*, according to the customs of *Normandy*, where it is called *la Novellette* ; and gaining a further power of taking Attaints, Juries, and Certificates, and delivery of Gaols : These Justices of Assise by the beginning of *Edward* the Third's Reign gave an end to the Justices in Eyre, who about that time did surcease and take leave.

Now could neither of these Justices, the Justices in Eyre not coming every Year into the Country, nor the other Justices (being sometimes at home, sometimes in their Circuit ; and in their Circuit, sometimes in one place, and sometimes in another) take ^s cognizance, or have the hearing and determining of maritime causes, seafaring matters, or any thing them concerning : For such causes did and do require a more speedy dispatch and determination than these Justices could afford them. *Nam^h breviter et summarie tales sunt examinande cause, nec ad plenissimas Judiciorum formulas recurrere oportet, sed succinctè de plano sine strepitu judiciorum et solenni figurâ ; immo velo levato in eis procedendum est, et ut æqueva, vela navis, navigationem et transfretationem properant, judicium sic properat ad navigandum et transfretandum festinatio ;* Merchants, Mariners, and Seamen, whose business and affairs are ordered here, ventilated at sea, and agitated beyond the Seas, must have a quick

^f Lamb. Arch. pag. 31, 32.

^s Lamb. Arch. pag. 35.

^h Peckius in tit. 5. l. 11. de Naufrag.

and

and sudden dispatch of *Justice*; that as they come in with one good wind, so they may go out with another: the Mariners cause admitteth no delay, but must have a judge, and a settled place of Judicature at all times in readiness for his dispatch: for whilst his cause is pleading for his right, his Ship is preparing for his Voyage; to which I may well apply the verse in *Virgil*, ⁱ *Interea classem velis aptare jubebat*; for his ditty is always the same with another verse of the same Author's, ^k *Rursus agam pelago, et ventis dare vela jubebo*.

Neither for the very same reason (if there had been no other) could the Court of Common Pleas, when it was settled, take cognizance of maritime causes, or seafaring matters, nor did the settling thereof disettle the *Marina*, which had at and before that time been committed unto the care and charge of several persons, as appeareth by those several Records of the ninth and eighth year of King *Henry* the Third already cited; for the Court of Common Pleas (it is plain) began not to be settled until the ninth year of the same King, if so soon; for it was but that year determined that it should be so settled; but the power thereof rested in the King himself, and his supreme Court, which constantly followed him whithersoever he removed; and was by *Magna Charta* cap. 11. that Year appointed only to be settled in one particular place, by these words, ^l *Communia placita non sequantur curiam nostram, sed teneantur in certo aliquo loco*.

Now although differences and controversies of what nature soever, were then perhaps neither so many, nor did so frequently arise as now, nor were of so great consequence and concernment, as since they have been; yet cannot I, or any man

ⁱ Virg. *Æneid.* 3.

^k Id. *Æn.* 4.

^l Lamb. *Archaion.*

else (as I conceive) think that they were so few, or so mean, as that they deserved no decision or determination at all.

I cannot see then how it can be possible, but that these *Custodes* must necessarily have then, even in those so ancient times, a complete Jurisdiction for the regulating all maritime and sea affairs, and for the deciding of all maritime and sea differences, by those most exact Sea-laws, before those times so well known unto so many Foreign Nations, and by them so gladly received, and put in use and execution ; and ^m doubtless not unknown here, for the reasons before express'd, together with the ancient Statutes of the Admiralty, and those Laws of *Oleron*, which (as it plainly appears) were introduced by *Richard* the First.

^m Rot. an. 12 Ed. 3. valent articuli super quibus Justic. &c. sunt consulendi.

C H A P. VII.

Of the Exercise of the Sea-laws by the Grecians, Athenians, Romans, Italians, Venetians, Spaniards ; and by the Admirals of Naples and Castile.

FROM the example of these *Rhodians*, have all or most Princes and Commonwealths in *Europe* obtained their Laws, continually constituted and appointed chief Captains, Commanders, Governors, or Admirals over all their Ships, seafaring-men, and sea-affairs, to order, rule, and govern them by those Laws, and to put the same in due execution, distinctly and apart from, and in no wise mixt or intermingled with those Laws whereby

whereby they regulated their Landmen and Land-businesſes.

The ^a *Grecians* have had from ancient times, and ſtill have their ſeveral ſpecial Judges for hearing and determining of all differences happening between Merchant and Merchant, Mariner and Mariner, and between Merchants and Mariners, and between Merchants and Owners of Ships, and Owners of Ships and Mariners, and between them and all others that had to do with them in their ſea-trading, and ſea-affairs. And theſe Governors of their Fleets are termed or called their *ſεαρχοι*, or chief Governors.

The ^b *Athenians* have likewise antiently had the like for the ſame purpoſe, which they termed or called their *Theſmothetæ*.

And the ^c *Romans* had antiently their *Archigubernii*, *præfeſti claſſis vel maris*, for their principal Governor, Commander of their Fleet and Shipping; but becauſe of their great employment, ſometime at Sea, ſometime at Land, they had their *Magiſteriani*, or *Juſticiarii* (or as ^d *Freccia* ſaith) their *Comes Commerciorum* for the Judicature of all maritime cauſes.

And when they came to be divided into ^e Kingdoms and Republicks, the Kingdoms had their Admirals, and the Republicks their Conſuls, who had the Judicature of Freight, &c.

The ^f *Italians* have their *l'Admiraglio* or *Amirante*, and under them their *li Conſoli del mare*; for the deciſion of all cauſes maritime.

^a Petit. de legibus Attic. Zenofinem & Phormionem.

^b Demotheſenes contra Apat.

Trekel.

^c Sejus Saturnius ad Sen. C.

^d Frecc. de officio Admiral. lib. ult. cap. de commerciis.

^e Vide etiam lib. 2. de naufrag.

^f Conſol.

del. mar. cap. 22.

Spain hath its ^g *Adelantado*, and divers Admirals, some for *Europe*, some for the *Indies*, all of equal power.

Naples hath an ^h Admiral of great power over all seafaring men, and all such as get their living by the Sea, or are employed in building and furnishing of Ships with what Necessaries soever ; and over all such as make it their Trade to take fish in the Sea, &c. And his Court is called *Magna Curia*, from which there lieth no appeal, only to the supreme Council ; all which he hath *exclusive* to all others, both for matters Criminal and Civil. The Admiral of *Castile* hath supreme Authority over all that use the Seas, and hath other Judges in Port-Towns for the dispatch of all ordinary businesses concerning Freight, Average, and all other maritime affairs.

^g Morisotus orbis maritimi l. 2. cap. 27. pag. 545. ^h Morisot. l. 2. cap. 22. p. 506. vide Frecc. de Subfend. tit. de offic. Admir. & Franc. de ponte, de potestate proregis. Garcias mastrilli de magistrat. lib. 5. cap. 13.

C H A P. VIII.

Of the Admiral of France and Denmark.

BUT to come nearer home, the Kingdom of *France* hath from antient times had Admirals ; and so affirmeth that learned Man ^a Mr. Selden : *Seculis in vetustioribus apud Gallos fuere quidem Admiralli seu rerum maritimarum præfetti ; ita tamen ut eorum scriptores de dignitatis initiis baud parum discrepent ;* saith he, they are so an-

^a De dominio maris, lib. 2. c. 18.

tient, that their Writers cannot agree when that dignity began: *Sed id plerumque aiunt, reperiri sub ^b Carolo Magno Rotlandum maris Britannici (Aremorici) præfectum, quem ex Eginharto vitæ Caroli scriptore contemporaneo petunt*: But saith he, in Eginharto *non maris Britannici, sed tantum Britannici littoris præfectus expressè is nuncupatur*; he was not Admiral of the *British* Sea, but of the *British* Sea-coasts or Shore; *Quo nomine non qui mari, ut provinciæ præest, sed qui littori, & dignitatis limiti designatur*: For he setteth forth plainly in the same chapter, that the Kings of *France* had no Dominion over those Seas; *Reges vero ipsos nullum tunc habuisse in mare imperium disertè scribit Johannes Tilius Curiae Parisiensis actuarius*: And there sets down *Tilius* his own words at large, together with divers of other proofs throughout the same chapter, which fully manifests the same.

Yet in the beginning of the ^c same chapter, he doth allow the *French* Admiral, or their *præfectus maris copiarum navalium in mari quocunque et nautarum regimen, et jurisdictionem in personas et res mobiles, qui sub judice veniant, pour raison ou occasion de fait de la mer; id est, ob causam aliquam à re maritima ortam*.

And in confirmation of this ^d Power and Jurisdiction, and for the more plain declaration thereof, the Office of the Admiral by the Parliament at *Paris* is since thus ratified, and declared in the King's name.

1. That in all Armies which shall be raised, and set out to sea, the Admiral shall be and continue chief, and our Lieutenant General shall be

^b Idem ibid. ubi citat. Choppin. de dominio Franciæ, lib. 1. tit. 15. § 11. & Pasquier en les recherches, lib. 2. cap. 14. & J. Tilius de rebus Gallicis, lib. 2.

^c Idem, ibid.

^d Edicts per Fontenon. Append. Hen. 3.

obeyed

obeyed in all maritime Towns or Places, which are or may be without Contradiction.

2. He shall have Jurisdiction, Cognisance, and Determination of all things done or committed on the Sea, or Shores of the same; likewise of all Acts of Merchandising, Fishing, Freighting, or letting to Freight, Sales or breach of Ships, of Contracts touching the matters aforesaid, of Charter-parties, of Sea-briefs, and of all other things whatsoever happening upon the Sea, or Shores thereof, as our Lieutenant alone; and to all purposes in the places aforesaid, which Jurisdiction, Cognisance, and Determination we have interdicted to all other Judges.

3. He shall have Cognizance exclusive to all others of causes Civil, and Criminal, of those who are of the *Dutch* Towns, of *Esterlings*, *English*, *Scotch*, *Portugals*, *Spaniards*, and Strangers, whether the cause of suit be betwixt Strangers only, or betwixt Strangers and our own Subjects, upon any occasion whatsoever.

He holdeth his principal Court at the Marble Table in the Palace of *Paris*, and appointeth Judges as his Deputies in maritime Cities and Towns, who hear and judge ordinary matters within their Circuits; and if any business fall out worthy of greater Consideration, they refer it to the Admirals principal Court.

The Admiral of *Denmark* is called *Riiks*, and hath the like power and authority the Admiral of *France* hath.

^c Gregor. Tholos. Syntag. lib. 47. tit. 3. Classan. p. 9. confid. 16. Dr. Zon. ex Morisot. lib. 2. cap. 15.

C H A P. IX.

Of the Admiral of Scotland.

Concerning the Admiral of *Scotland*, we may (I am confident) very well believe *Wellwood*, who was that Countryman, and in his ^a *Probeme* upon his conscience, as a Professor of the Civil Law, denieth that he had any imployment or part in any Admiralty; and he setteth it forth thus, and saith,

1. That for the readier obedience to the ^b great Admiral of the Sea, it is by common consent of Nations successively agreed, that in consideration of the Admiral's sovereign commandment, special preferment, and power over the lives of men within the Sea-flood, that therefore they should also have a sovereign Jurisdiction only proper to themselves over all seafaring men within their bounds, and in all seafaring causes, and debates, Civil and Criminal; so that no other Judge of any degree, at least in *Scotland*, may meddle therewith, but only by way of assistance; and that must be by way of Commission, and in difficult causes; and he instanceth in an action intended by *Antoni de la Tour*, against one *Christian Masters*, 6 *Novemb. Anno 1542.* and he quoteth for this example the first Tome, and the 555 Chapter of the Registry of *Scotland*.

2. He saith ^c the Admiral is to constitute a Vice-Admiral, and Captains to supply his absence at Sea, as also Deputies for particular parts on the Coasts, with Coroners to view the dead bodies

^a *Wellwood*, proœm.

^c *Idem*, *ibid.*

^b *Wellwood*, cap. 2. pag. 10.

found on Sea, or found on the Coasts thereof ; And Commissioners or Judges General for exercising Justice in the High-Court on Land, in causes Criminal, specifying likewise the Officers thereunto belonging, and these Commissioners or Judges General may sit where they please, to execute Justice, to imprison and relax, and to command the King's Prisons, Boroughs, and their Prison-keepers, to receive and keep their Prisoners.

3. That ^d his authority is distinctly acknowledged in all things pertaining to seafaring matters, and therefore his Judge Deputy, or Commissary is called Judge Admiral ; and he and none other doth sit, cognost, determine, and administer Justice in all Civil debates between Mariner and Merchant, and between Mariner and Mariner : as likewise upon all Complaints, Contracts, Offences, Pleas, Exchanges, Affecurations, Debts, Accompts, Charter-parties, Covenants, and all other Writings concerning lading and unlading of ships, freights, hires, money lent upon casualties and hazard at sea, and all other business whatsoever amongst seafarers done on sea, this side sea, or beyond sea, not forgetting cognition of the Writs and Appeals from other Judges, and the causes of Actions of Reprizal or Letters of Marque.

Yea, and to take ^e Stipulations, Cognizances, and Insinuations in the books of the Admiralty, and to arrest and put in execution.

4. That he is to enquire as well within liberties, as without, by the Oath of twelve men upon several offences.

^d Id. cap. eodem, pag. 11. ^e Id. cap. eod. p. 12. ubi citat diplomata Admiral. in utroque regno & librum De officio Admir. Angl.

1. Of Revealers of the King and Country their secrets over sea in time of war.
2. Of all Pirates, their Assisters and Abettors, Out-traders and Receptours.
3. Of the Breakers of the Admirals Arrestments and Attachments.
4. Of Goods forbidden, and Merchandises not customed, and yet shipped and transported.
5. Of the Resisters of the Admirals Officers in executing their precepts.
6. Of the Forestallers, Regraters, and Dearth-ers of corn, fish, drink, fire, wood and victuals carried over sea.
7. Of Pleaders before other Judges than the Judge Admiral in causes pertaining to his Jurisdiction, as also of the Judges taking cognizance of such causes.
8. Of such as give Sea-briefs, Testimonials, or such like, over sea, without power or licence from the Admiral.
9. Of Transporters and Carriers of Traitors, Rebels, manifest Transgressors, and Fugitives from Justice over sea.
10. Of Freighters and Hirers of Ships of other Nations, when they may be served by their own Nation.
11. Of such as cast Ballasting-sand, or what else in Harbours or Channels that may defile or spoil the same.
12. Of Ship or Boat-wrights, extorting the Leiges or Subjects.
13. Of taking away the Buoy from the Anchor, or cutters of Cables or other Tews.
14. Of false Weights and Measures by sea.
15. Of Shedders of other mens blood on Sea, or any Port or River below the first Bridge next the Sea.

16. Of such as have furnished Ships with ill wares, or gear, as the Seamen term it, whereby any are hurt, lamed, or maimed.

17. Of Customers and Water-Bailiffs, which take more Custom or Anchorage than hath been usual.

18. Of such as absent themselves from Wapen-shewing, or Mustering, which the Admiral may ordain twice a year in time of war, and once in two year in time of peace, upon all dwellers at Ports and Harbours, or within one mile near thereunto.

19. Of all sorts of transgressions committed by Seamen, Ferry-men, Watermen, as well in Floods, Rivers, and Creeks, from the first Bridges, as on the Seas, Fishers, Pilots, Shipwrights, and Prest-men, and continuing his authority, after due cognition to levy and gather the penalties and amercements of all such transgressors, together with the goods of Pirates, Felons, capital Faulters, their Receivers, Assisters, attainted, convict, condemned, outlawed, or horned.

20. Of Deodands, *viz.* the thing, whether Boat or Ship, &c. that caused the death of a man, or by reason whereof a man did perish.

21. Of Waif or Stray-goods, Wreck of Sea, Coast-goods.

22. Of Shares, lawful Prizes, or Goods of the Enemy, Lagon, Flotson and Jetson: Lagon, which lyeth on the Sea-ground, or is taken from the bottom of the Sea: Flotson, which is found swimming on the Sea; Jetson, which is cast forth of the Sea, and is found on the Shoar, with Anchorages, Beaconages, Mear-Swine, Sturgeons, and Whales, and all fish of extraordinary greatness, which have always been allowed to the Admiral.

C H A P. X.

From the common Acceptance of the Sea-laws in other Nations is inferred the Acceptance of them in England.

THUS have I set forth the antient original and beginning of the Sea-laws from the *Rhodes* so exactly by them set down according to the rules of equity, that none of the *Roman* Emperors, the Masters of Law, no not *Antoninus*, who (as he accounted himself) was *τῷ κόσμῳ κύριος*, *Mundi dominus*, would undertake the decision of maritime causes, but would refer them to the determination of the Laws of the *Rhodes*.

I have likewise set forth the common and glad acceptance of them, or of what could be got of them; or rather the earnest suit for them by very many other Nations, the use whereof hath been most profitably continued amongst them.

Can it be thought then that this Nation being an Island (to which Shipping and Navigation must needs be most necessary and useful) should deny or refuse these Laws, so serviceable and useful for their Maritime affairs, there being no other Law here useful for that purpose? or shall it be thought that this Nation neither knew or heard of them, when so many other Nations did?

Certainly no: This Nation hath very antiently flourished by its Trade and Traffick with other Nations, and hath been frequently accustomed to Navigation and Transfretation, and hath had as well converse as commerce with those Nations, and would as well convey those Laws hither for

their common Government, as transport their own Commodities thither for their private benefit, which happily could not be enjoyed one without the other. If not so, yet let no man say that the two famous antient Universities of the Land, wherein there be so many Colleges and Houses of antient foundation, in which have been by the Founders themselves so many Fellowships, Scholarships, and places founded, settled, and employed properly and solely for Students in the Civil and Maritime Laws, or the Laws proper and necessarily useful for Navigation and Maritime affairs, being so scattered, (or I will rather say decently, as flowers strewed) and dispersed through the whole body of the Civil Law, the subject whereon those Students were to spend their daily labour, pains, and employment, could possibly be long ignorant of those Laws, that these so many forenamed Nations had so long and so well known?

What if known by this Nation, was there yet any use made of them in it? That they were known by what hath been said or considered, certainly I cannot have so ill a conceipt of my Countrymen, the antient Inhabitants of this Nation, as to think them so long ignorant and unskilful of those antient Laws of the Sea, and Laws so necessary for Maritime affairs, as some would make them to be; much less will I think the Government of this Nation to be without so good order and justice in any particular, as not to settle these Laws once known for the government of its Maritime matters; nor will I imagine the Maritime men to be so dull or stupid, as not gladly to embrace the settlement of such Laws as tended so much to their quiet, and advance of their profit, being to trade and commerce with such as
used,

used, in this particular, no other Laws but these.

Again, shall we say that so many Nations, some so remote, and some so near home, as *France* but over against us, and *Scotland* even within the same Island, all governed by the Civil Laws, or Municipal Laws thence derived, and by them regulated and guided as the Sea Laws are, and which keep the paths and very footsteps thereof in their proceedings, as the Sea Laws do; have with so much eagerness pursued and sought for those Sea Laws, and with so much cheerfulness embraced and continued them; and that this Nation that is invested in a Law particular and municipal, which doth in no wise so much as challenge or claim any derivation from, or dependency of the Civil Law, but is altogether different and disagreeable thereunto in its proceedings, and oftentimes in its determinations, and hath no foundation or grounds whereon the decisions of Sea controversies can be built, should without the knowledge and practise of these Civil and Maritime Laws deal and trade with such as do live under them, and are guided by them? Surely no, so many inconveniences, distractions, and distempers, by reason of the variousness of two Laws, both in proceedings, and oftentimes in determinations, would long alone have destroyed all our Commerce and Traffick with these other Nations, and so consequently have despoiled us of our Navigation and Shipping, the principal safeguard of this Land.

Nay, I am so far from doubting the acceptance of these Maritime and Sea Laws here in *England*, as well as in other Nations, that I am confident they were here settled before they were settled in divers of those Nations before mentioned: For I must not so much as think, or have the least con-

ceipt that *England* ever borrowed any thing at all from those Articles which are cognoscible in the Admiralty of *Scotland*. But I may very well believe that those Articles of *Scotland* were borrowed from some of the three antient Records of the Admiralty of *England*: (For so are all things by the Admiral, Judge, or Lieutenant decreed, and registred by an Ordinance of *Richard* the First, made at *Grimsbj*, styled and said to be) which are with very many other antient things, comprised in the Black Book of the Admiralty, which are therein ingrossed in an antient Character upon Vellum, one of which immediately followeth the antient Statutes of the Admiralty, and is there set down in old French as the said Statutes are, and containeth 38 Articles.

A second is a *Latin* Copy translated out of another antient *French* Record by *Roughton*, and in an antient Character in the same manner, inserted into the same book, and containeth 52 Articles.

The third is the Inquisition taken at *Quinborough* the 2d of *April*, in the 49th year of the Reign of *Edward* the Third; at which time and to which place he caused several Maritime and Sea-faring and Sea-trading men of the best judgment and knowledge in Sea affairs of most of the Maritime parts of *England* to be summoned, and there before *W. Nevel* Admiral of the *North*, *Philip Courtney* then Admiral of the *West*, and *William* Lord *Latimer* Chamberlain of *England*, and Warden of the *Cinque-Ports*, to meet together and consider of all such Points and Matters as had antiently and usually been observable, inquirable, and punishable in the Admiralty, upon which inquisition 81 Articles were concluded on, which are likewise ingrossed (they being more particular than the former) in old *French*, in the said

said antient Black Book of the Admiralty: But these (as the *Scottish* Articles) do concern only matters to be proceeded against criminally, and not matters of Trade, Traffick and Commerce, and damages sustained at Sea, or in Ports, Havens, &c. whereof I shall come to treat in the second Book; yet do these several Records in several Articles set forth in what manner such as shall sue or implead any Merchant, Mariner, or Seafaring-man for any Contract Maritime, whether made by Charter-party or otherwise, or for any thing whatsoever done of, or concerning any Ship or other Vessel in any other Court than the Admiralty shall be proceeded against, as I shall more particularly hereafter set forth: But my chiefeft reason that the Civil and Maritime Law-Courts were here settled in *England*, before they were settled in divers of those other Nations, is for that this Nation hath had the Dominion over the *British* Seas, and their High-Admirals their Jurisdiction over those Maritime Affairs, which fell *sub isto regimine et dominio*, so antiently, as that in *Edward* the First's time the same was acknowledged by very many other Nations to have been then beyond the memory of man, as I have before set forth in the ^a 5th chapter of this Book, where I take my authority from an antient Record of the Tower in nature of a Libel, intituled *De superioritate maris Angliæ, et jure officii Admiralitatis in eodem*; as is in the same 5th chapter expressed. The Record it self I was a long time since shewed by my old friend Mr. *Collet*, who for a long time had the keeping of the Tower Records under several men, unto whose care and

^a Sup. cap. 5.

custody the same were committed ; and afterwards I met with the same in Mr. Selden's Book, ^b *De dominio maris*, which I had not before read over ; and after that I found the same set forth by ^c Sir Edward Coke in his Jurisdictions of Courts ; yet I will not send the Reader thither to seek it, but for his readier perusal I shall again set forth the same here, and therewith terminate and end this first Book of my Maritime Dicæologie of England. The words of the Record are these.

A vous Seigneurs Auditors Deputes per le Rois de Engleterre, et de France a redresser les damages faits as gents de leur royalmes et des auters terres subgits a leur seignuries per mer et per terre en temps de pees et trewes. Monstrent les procorours des Prelats et Nobles, et del Admiral de la mier d'Engleterre, et de Cominaltes des Cities et des Villes, et des Merchants, Mariners, Messagiers, et Pelerins, et des toutes aultres du dit Royalme de Engleterre, et des aultres terres subgits a la Seignurie du dit Roy d'Engleterre, et daillours sicome de la marine de Genuë, Cataloigne, Espaigne, Alemaigne, Zeland, Hayland, Frise, Dennemarch, et Norway, et de plusours aultres lieux del Empier, que come les Roys d'Engleterre per raison du dit Royalme du temps dont il ny ad memoire du contrarie eussent este en paiceable possession de la Soveraigne Seignurie de la mier d'Engleterre et des Isles esteaunts en ycele per ordinance et establicement des lois, estatuts, et defenses et d'armes et des vesseaux autrement garnies que vesseaux de merchandise et de sèuerte prendre et sauve de gardes doner en tous cas que mestier serra et par ordinance entre tout manere des gents taunt

^b Seld. De dom. maris, lib. 2. c. 26.
Court. c. 22.

^c Coke Jurisdic.

d'autre seignurie come de leur de propre de tous autres faitz necessaries a la garde de pees droiture et equitie par elonques passants et per souveraigne garde et toute manere de conisance et justice haulte et basse sur les dites lois, estatuts, ordinances, et defenses, et pur toutes autres faits queux a le government de souveraigne Seignurie appertennir purrent es lieux avandits. Et A. de B. Admiral de la dit mier deputey per le Roy d'Englitterre, et tous les autres Admirals par mesme celus Roy d'Englitterre et ces Ancesters iades Royes d'Englitterre eussent este en paisiable possession de la dit souveraigne garde ove la conisance et justice et tous les autres appurtenances avant ditz forprise en case dappele et de que-rele fait de eux a leur souveraigne Roys d'Englitterre de defalte de droit ou de malvais judgement, et especialment pur empeschement metre et justice faire seurte prendre de la pees de tout manere de gents usants armes en la dit mier ou menans niefs aultrement apparreilles ou garnies que nappertient au nief de marchants, et en tous autres points en queux homme poit avoir reasonable cause de suspition vers eux de robbery, ou des autres mesfaitz. Et come le maistre de niefs du dit roialme d'Englitterre en absence des dits Admirals eussent este en paisiable possession de conuistre et juger des tous faits en la dite mier entre tous manere de gents felone les lois estatuts et les defenses, franchises et custumes.

Et come en le primer article de lailliance nagaires faite entre les dites Roys en les traites sur le darreine pees de Paris soient comprises les paroles que sensuient en une sedule annexe a yceste.

Primerment, il est traite et accorde entre nous et les messagers et les procurours de surdiz en nom des dits Rois que yceux Roys ferront lun a lautre desores en avant bons verrois et loyaux amyes et eydans coun-

tre tout homme sauue lesglise de Rome en tiels manere que si ascun ou plusours quicunquez ilz fuissent voloient deponticer, empbescher, ou troubler les ditz Roys en franchises et liberties, priuiledges es droitz, es droitures, ou es custumes de eux et de leur royalmes quilz ferront bons et loyaux emys et aydans countre toute homme que puisse venire et morir a defendre, gardi et maintenir les franchises, les liberties, les priuileges, les droitz, les droitures, et les custumes de susdites, except le dit Roy d'Englitterre Monsieur John Duc de Braban en Brabant et ses beires descendus de lui et de la fille le Roy d'Englitterre, et except pur le dit nostre Seignior le Roy de France excellent Prince Dupert Roy d'Alemaigne, ses beires Roy d'Alemaigne, et Monsieur Johan Counte de Henan en Henan, et que lun ne serra en consaile ne en aide ou lautre perde vie, membre, estate ne honour temporel. Monsieur Reymer Grimbald maistre de la navie du dit Roy de France que se dit estre Admiral de la dit mier deputey person Seignior avant dit pur sa guerre contre les Flemings apres le dite alliance faite et affirmee contre le forme et la force de mesme lalliance et lintention de ceux qui la firent l'office del Admiral en la dite mier d'Englitterre par commission du dit Roy de France torseusement emprist et usa un an et plus en pernant le gents et Merchants du Royalme d'Englitterre et daillours per la dite mier passaints ouesque leur biens et les gents ainsi prises livra a la prison de son dit Seignior le Roy de France leur biens et marchandizes a les receivors per mesme celuy Roy de France a ceo deputey en les ports de son dit Royalme come a luy forfait et acquis fist amener per son juggement et a gard, et la prise et detenue des dites gents ove leur dites biens et marchandises et son dit juggement, et a gard sur la forfaiture de eaux et acquest ait justifie devant vous

Seigneurs

Seigneurs Auditors en escripts per my l'autorité de sa dite commission sur l'Admiralte avantdite per lui ainsi usurpe et per une defense communement fait per le Roy d'Engleterre permy son poer selon la forme de le tiers article de lalliance avantdite qui contient les paroles desuscripts en requerant que de ceo il en fuisse quitz et absolus en grand damage et prejudice du dite Roy d'Engleterre et des Prelats et Nobles et aultres desusnoms. Purquoy les dites procurours et les noms de leurs ditz Seignours a vous Seignours Auditors avantditz pryent que deliverance dewe et bastine des dites gente ovesque leur biens et marchandises ainsi prises et detenues faicets estre fait al Admiral du dit Roy d'Engleterre a qui la conifance de ceo apertient de droit sicome dessus est dit, ainsi quils sauns disturbance de vous et d'aultre puisse de ceo conoistre et faire ceo que apertient a son office avant dit. Et que le dit Monsieur Reymer soit condempne et distreint a faire due satisfaction a tous les dits damages seavant come il purra suffire et en sa defalte son dit Seignior le Roy de France per que il estoit deputez al dit office, et que apres dewe satisfaction faitz as dits damages le dit Monsieur Reymer soit si duement punis par le blemissement de la dite alliance, que la puniffion de luy soit as autres exemple par temps a venir.

Item in alio Rotulo annexo.

Item, A la fin que venes et consideres les formes des proces et les letters ordonees per les consaillers le Aiel nostre Seignior le Roy, etc. especialment a retinir et maintenir la Souveraign que ses dits ancesters Roys d'Engleterre loloient avoir en la dite mier d'Engleterre, quant al amendment, declaration, et interpretation des loix per eux faites a gouverner
touts

touts maneres des gents passants per la dite mier. Et Primerement a son Admiral et as Maisters et Mariners des niefs de Cync ports d'Englitterre, et des autres terres annexes a la corone d'Englitterre emendant a sa armee en la dite mier pur retinir et maintenir la garde des lois avantditz, et la punission de touts faitz al encountre en la mier susdite.

Libri primi finis.

THE

T H E
Maritime Dicæologie;
O R,
SEA-JURISDICTION.

The SECOND BOOK.

C H A P. I.

That the Sea Jurisdiction and the Land Jurisdiction are, and so necessarily must be, two different and distinct Jurisdictions, having no dependance each upon the other.

ALthough the exact time of the beginning or first settlement of the Jurisdiction of the Admiralty Court here in *England*, be not by me in the preceding book so clearly set forth as some might have expected, yet is some foundation thereof deduced from such hight of Antiquity, as that I cannot but hope that the Jurisdiction itself will for that cause, and what shall be shewed in this ensuing Treatise, deserve a continuance to posterity. And although in the precited antient Records, we find not the same title of that Office observed, and kept, yet may we very well perceive the same Office to have been preserved,
exer-

exercised, and executed, though under several titles. And we find that in *Edward* the First's time (as plainly appears by the before quoted ^a Libel, and other before cited Records) the same was exercised under the title of *the Admiral*: And doubtless that title was long before that time known to belong unto the chief Captain, Commander, or Keeper of the Fleets, Ports, and Seas, and hath been so used by many other Nations in *Europe*. However the diversity of names neither extinguisheth the nature of the Office, nor doth so much as make any distinction between the one and the other person so diversly named, whilst they both bear one and the same signification.

But here I shall proceed next to distinguish this Jurisdiction from the Land Jurisdiction, and shew that the Land Jurisdiction and Sea Jurisdiction are (and must necessarily so be) two absolute, different and distinct Jurisdictions, having no dependency one upon the other.

And first, these two Jurisdictions are absolutely different and distinct in respect of the Parties which exercise them; the one being exercised in the active and directive part by the Admirals, Captains, and Governors of the Seas, Sea-coasts, Ports and Shipping, which have all or most of them from antient times been *Equites Aurati*, descended from Royal Blood: Noblemen, or descended from Nobility, as ^b Sir *Henry Spelman* saith. The judicial part by the Judges of the High Court of the Admiralty, and Vice-Admirals Courts, learned and well vers'd in the Civil and Maritime Laws, *juxta illud venerabilis ejusdem* ^c *Spelmanni verb.* De Admiraglio Gallico, pag. 16. *Nos enim, &c. de quo vide*

^a Cap. ult. prim. lib. ^b Spelm. verbo *Admirallorum series*.
^c Spelm. verb. *Admir. Gallic.* p. 16. & supra, cap. 2. lib. 1. sub fine.

supra,

supra, cap. 2. lib. 1. *sub fine*. The other exercised by the learned Judges of the Land in the Courts at *Westminster*, and within the Bodies of the several Counties of the Nation in their several Circuits; the Judges of one Circuit having no authority or power over the other, nor having any thing to do to intermeddle with the other in their Circuits.

Secondly, the Court of the Admiralty hath from antient times been styled *Suprema Curia sue Majestatis Admiralitatis Angliæ*; so that the same hath antiently been styled the King's Court, as well as his Courts at *Westminster*. But from the one Jurisdiction there lieth an immediate appeal unto the supreme authority in Chancery, which Court appointeth Judges Delegates by Commission under the Great Seal (upon the apprehension of an illegal sentence) who are assigned and appointed Judges for further hearing, deciding, and adjudging of the said sentence and cause of appeal, according to the rules of the Civil Law.

In the other there lies a Writ of Error from the Common Pleas to the King's Bench, and from that Bench to the Judges of all the three Benches in the Exchequer Chamber.

The Appeal from the Admiralty is for the rectifying of the Sentence, as well as of the proceedings, which appeal the Foreigner must be allowed, otherwise he will complain at home of injustice done here, and so proceed to the course of obtaining Letters of Reprisal for his satisfaction, whether the first sentence was good or not, upon this ground only, that he had not the due course of Law allowed him, for the trial of that Sentence which was first given against him.

The Writ of Error reverseth the Judgment, tho' never so just, if an error be found in the proceedings; but reverseth not the Judgment, tho'

the same seem never so erroneous to him against whom it was given, if no error be found in the proceedings.

Thirdly, they are absolutely different and distinct in regard of the different and distinct subjects the Judges of them do handle and are busied about ; they of the one being busied and occupied in the ordering and disposing of all businesses upon the Coasts and Havens of the Seas, tending to the preservation of this Nation from foreign Invasion, and keeping thereof in safety and quiet ; and in the building, repairing, tackling, and furnishing, or causing the building, repairing, tackling, and furnishing of all manner or sorts of Ships, Boats, or Vessels whatsoever for that purpose, and keeping the dominion over the *British* Seas, and in the otherwise ordering and directing of all manner of Ships, and Shipping, and seafaring Men, and all manner of Trading, Merchandising, Traffick, and Commerce thereby, or therewith ; and in hearing, deciding, and adjudging all differences, debates and controversies arising from things done, or to be done at Sea, or in any Port, Harbour, or Creek thereof, either between the King or the Lord High Admiral, and any Party, or between Party and Party, Foreigner or others, whether Criminal or Civil.

Those of the other Jurisdiction being employed in ordering of all things for the good, peace and quiet of this Kingdom within itself, and in the hearing and determining of all offences, debates and differences arising, or growing from any thing done, or to be done within the several bodies of the Counties thereof, whether they be Criminal or Civil, whether they concern Estates real or personal ; whether they be between the King, and any other

other party, or between party and party, which are triable by the said Law.

Fourthly, they are different and distinct, in respect of the rules the Judges proceed unto judgment by, those of the one Jurisdiction proceeding according to the rules of the Civil Law, known and used by all or most Courts and Judicatures in Christendom.

Those of the other proceeding according to Rules and Laws municipal, known only unto themselves, and such as are well skilled and vers'd in the same, and are Inhabitants and Subjects of this Nation.

To set forth the differences between these two Jurisdictions in their proceedings, was to undertake the setting down of the whole proceedings in all several causes, triable both in the Admiralty, and the Common Law-Courts; the one of which (with some pains) I might very well do; but the other belongs not to me to undertake: yet so much I know of them, as that I am sufficiently informed in my judgment, that they are exceedingly different even in their proceedings.

Fifthly, they are different even in the Laws themselves, whereby the Judges are guided to their determination, and directed in their giving of judgment; those of the one Jurisdiction determining according to those Civil Laws, which are Maritime, and still retained, and kept in use in most Nations in *Europe*, adjoining thereunto those few and short Laws of *Oleron*, with some other customary Laws of the Seas, which are commonly accepted and known, where such Judicatories are kept and held; and are expressly declared and published by several Maritime Writers. Those of the other judging according to a municipal

Law, fitted, prepared, and composed only for Land affairs, and indeed only for the Land affairs of this Kingdom by the advice of such as have had the best judgment in those Land affairs.

And as these are different and distinct from the Civil and Maritime Laws, which have been composed by the advice of such as have had frequent Traffick, Trade, and Commerce at sea, and by that means have had best knowledge and judgment in sea affairs : So indeed in the same manner are the Civil Laws which have been composed and established in other Nations by such as have been of best experience in busineses of the Republick, for the guiding and governance thereof distinguished and kept apart from those other Civil Laws which are Maritime ^d.

The absolute necessity of keeping these two Jurisdictions thus distinct one from the other, you shall have fully set forth in the 14 & 15 chapters of this second Book, wherein is shewed the use and practice of the Civil Law in most foreign Nations, and that the same is absolutely necessary to be used and practised in all Admiralty Courts, unto which two chapters I especially refer the Reader.

^d *Infra* lib. isto 2. cap. 14 & 15.

C H A P. II.

That the Jurisdiction of the Admiralty doth extend to all manner of Ships, Shipping, Seafaring and Sea-trading men.

Seeing then that the Admiralty is a distinct Jurisdiction from the Land Jurisdiction, in the next place the bounds and limits thereof are to be considered, and those will best appear by the before mentioned Records, of the Patents and Grants of that Jurisdiction.

First then, that this Jurisdiction extendeth to all manner of Ships and Shipping, (I conceive) will not be denied; for it is plain by the Records already quoted, that the Kings had in those ancient times their Admirals as well for the Northern Seas and Coasts as the Western; yea, and sometimes several Admirals for one of these Coasts, as in the twentieth year of *Edward the second*, *quidam^a habuerunt custodiam costerarum maris inter Toffe & Thaw, & quidam aliarum*; and in the tenth year of the same King's reign, one *W.* had the same power *ab ore aquæ Thamesis usque Ipswic. and Johannes de Thorpe ab Ipswic. usque Linn.*

Shall we think then that this King had in those times (when shipping was far more scarce than it hath been since) in each of these Coasts, and in every of these particular places within these Coasts (where he had *Capitaneum & Admirallum flotæ suæ*) a Fleet consisting of his own particular Ships, which he called *flota nostra*, which required a Captain and Admiral to govern them? Certainly no,

^a Rot. an. 20. Ed. 2. memb. 7.

but all Ships, Boats and Vessels whatsoever belonging unto sea, *tam remiculi, quàm corbitæ sive gauli ; tam naves frumentariæ sive onerariæ, quàm naves præsiariæ ; tam Beucentauri, quàm naves prætoriaræ sive Navarchæ, &c.* were all comprehended under *flota navium*. And this is plain, for that these Governors were sometimes stiled ^b *Capitanei navigii*, as well as *Capitanei & Admiralli flotæ navium* : And that *navigium* signifieth all manner of shipping, I have already shewed. And likewise very many of the antient Patents expressly run *flotæ nostræ omnium navium* ; I shall instance only in one or two, as in that of the 8 *Ed.* 3. which runneth thus : *Rex omnibus ad quos, &c. salutem ; Sciatis quod nos de fidelitate probatâ & circumspeditione providâ dilecti & fidelis nostri Rogeri de Hengham plenariè confidentes, constituimus ipsum Rogerum Capitaneum & Admirallum flotæ nostræ omnium navium, &c. tam quinque portuum quam aliorum portuum & locorum per costeram maris versus partes, &c.*

And in that of the first of *Edward the Third*, in these words, *Rex omnibus ad quos, &c. salutem : Sciatis quod nos de circumspeditione & fidelitate dilecti nobis Johannis Parbroun confidentes, constituimus eum Capitaneum & Admirallum flotæ nostræ omnium navium magnæ Jernemouth, & omnium aliorum locorum, &c. per costeram maris versus partes Boreales, quamdiu nobis placuerit, &c.*

So that these who were Admirals of the King's Fleet, were Admirals of all Ports, and Admirals of all Ships of all Ports.

And as it extendeth to all manner of Shipping, so doth it extend unto all manner of Shipmen : for to little purpose was it for the Admirals to have

^b Sup. cap. 1. lib. prim.

had power and authority over the wooden Vessels, if they had not had power over all the Seamen and Mariners in them, yea, and over all others that belonged thereunto, or had to do therewith, or were skilled therein. For by almost all the beforecited Patents they had not only *potestatem super omnes & singulos marinarios*, but also *super omnes de flotâ*, of or belonging to the Fleet, Navage, Ships, or Shipping, as well the owners of them, the Merchants and Traders with them, and Employers of them, as the Mariners of what degree soever, sailing in them, or in any wise belonging to them, *tam mercatores & exercitores, quàm proprietarios; tam naucleros, quàm helciarios; tam gubernatores, quàm diaturios; tam proretas, quàm mesonautas*: and not only over these, but also over all such as were imployed in their Art, Trade, or Occupation, for and towards the building, repairing, fitting and furnishing of Ships for Navigation, and setting them forth to Sea, as Shipwrights, Anchor smiths, Rope and Cable-makers, and the like, *tam fabros anchorarios quàm naupegos, prymnesia anchoralia, retinacula puppis stupea, & funes nauticos, tam venditores, quàm fabricatores, &c.* All which were said to be *de flota navium*, or *de navigio*; of or belonging to the Fleet or Navage; and were those *omnes alii de flotâ*, over whom the Admirals had command, power, and authority, besides the Mariner; as is set forth in the forementioned Records. And as it had been to little purpose for the Admiral to have had power over the Vessels, and not over the Mariners and Seamen, and others fit for that imployment; so had it been to as little purpose, if he had not had the same power over the Owners of them, and the Merchants that employed them, who otherwise would have either opposed his directing the use of

them, or his own using of them at all, tho' for the service of the King, and good of the Commonwealth. And to as little purpose had this extent of his Jurisdiction been, had he not had the command over all such as were most able and skilful to fit and furnish them for service.

And the constituting of a man *Capitaneum* & *Admirallum Flotæ navium*, *Capitanem navigii*, *Custodem marinæ*, *Capitaneum nautarum* & *marinellorum*, &c. doth give a very great power not particularly specified in the Grant.

For all men very well know, that all Patents and Grants, as well of Offices and Places, as of Lands and other things, did in antient times comprehend and contain in them very much, in a very few lines and words; and have been daily enlarged by particular expressions, and singular specifications, when as nothing more hath been granted, than what was by general words granted before: And the reason hath been, lest some particulars in process of time might be lost for want of continual use, or drawn into question, and cavilled against, whether used or not used.

Yet have I seldom met with any of these specific Grants that do trust to such specification, without the general addition, *et omnia alia pertinentia*, or the like, lest in their particular specifications they should lose somewhat of that which was formerly granted in general words, and by some perhaps observed, and known to be appurtenant, and belonging unto the thing granted, tho' for some time discontinued.

We must not think therefore that by specifying particulars, and stretching a conveyance of half a dozen lines into a whole skin of Parchment or more, one foot of Land is gained the more thereby: for if so, I might very well conceive, that the seller
often-

oftentimes might by that means sell more than his own. ' For I have often seen many more particulars specified in the Conveyance from the seller, than were ever intended by the Conveyance to pass to the buyer, or the seller had to sell. And indeed this enlarging of Conveyances and Grants is so usual, that a man might very well conceive (the Evidences being perused from the first to the last) that every alienation had begot an enlargement of the estate, when nothing at all hath been added thereto.

We must not think therefore, that because there have been more particulars of the Admiral's power and jurisdiction specified in the latter Grants and Patents, than were in the former and more antient; that therefore these latter Admirals have gained greater and larger power and jurisdiction than the former had.

Nor certainly can any thing be gained by specifying particulars; something may be saved, and somewhat may be very well lost, if *et omnia alia* save it not.

I will not deny but that there may be, and daily are made unto Manors, Lands, and Tenements, many additions, whereby they are much increased.

And likewise to offices and other places, both in extent of office, and increase of fees, or other profits: But these additions do, and always will appear by the Deeds of Conveyance, Grants or Patents themselves, and are distinguished from the antient Manors, &c. and their appurtenances; and from the antient offices and places, their rights and profits, by *Et præterea*, or *ac etiam*, or *ac similiter*, &c.

And where there is an addition, these words or the like always are; but always where these words are,

are, there is not always an addition ; for they are sometimes used by way of specification, and sometimes instead of an *et*, between two specifications.

Now in antient times, the very constituting an Admiral, Captain, or Governor of the Fleet or Navage, carried with it all the power and jurisdiction belonging unto that office or place, without specifying any of the particulars ; and when any particular design was in hand at the time of the constituting and making of the Captain or Admiral, or whatsoever other title he bore (as often such design at that time there was, which caused the change of the Admiral) then was that particular power which belonged unto his office, and concerned that design, specified either in the Mandate directed to all Sheriffs, and other Ministers and Officers for their obedience unto him, as Admiral, Captain, &c. but in such manner as sheweth that particular to be included amongst the many other particulars granted unto him by his Patent, under the general words, *Constituimus dilectum et fidelem N. Capitaneum et Admirallum flotæ navium*, or *Capitaneum Navigii*, &c. or else that particular, when any is specified in the body of the Patent with an *itaquod ; ut, itaquod potest hoc vel illud facere* ; which plainly sheweth that that same particular was before amongst others granted in the preceding general words. I shall here set down only one example of each. King *Edward* the Second in the tenth year of his Reign, grants a Patent of this Office to *John de Atby*, under these general words.

Rex omnibus ad quos, &c. salutem : Sciatis ^c quod constituimus dilectum & fidelem nostrum Johannem le Athy Capitaneum Navigii ad partes Hiberniæ,

^c Rot. an. 10 Ed. 2. secunda part. pat. m. 22.

Ec. quamdiu nostræ placuerit voluntati, in cujus, Ec. Teste Rege apud Claringdon 28 die Martii per brev. de privato sigillo.

And he giveth this Mandate upon the constituting of him, *Et^d mandatum est Vicecomitibus, Ballivis, Ministris, et omnibus fidelibus Regis Marinaris, et aliis ad quos, Ec. quod eidem Johanni, tanquam Capiteo navigii prædicti, in omnibus, quæ ad salvam et securam custodiam terrarum prædictarum pertinent, consulentes sint, intendentes et auxiliantes, quotiens opus fuerit, et per ipsum Johannem fuerint super hoc ex parte Regis præmoniti. T. ut supra per brev. de privato sigillo.*

And having given this Command in general to all Officers, *quod in omnibus consulentes sint, intendentes, & auxiliantes*; yet lest they might perhaps not understand one particular of extraordinary great power to be comprehended in the Admiral's Patent under these general Words, *constituimus Capitaneum Navigii*, by another Mandate he declareth that he had made him Captain of the Navage, and thereby given him this power; and these are the Words of the Mandate.

Rex^e omnibus Ballivis, Ministris, fidelibus suis, ad quos, Ec. salutem. Cum constituerimus dilectum et fidelem nostrum Johannem de Athy Capitaneum navigii ad partes Hiberniæ, Ec. dedimus ei potestatem ad eligendum homines sufficientes, ad arma potentes, prout sibi viderit expedire ad morandum secum in navigio prædicto pro defensione et salvatione terrarum prædictarum, et ad puniendum illos, quos in hac parte contrarios invenerit, et rebelles; et ideo vobis, et cuilibet vestrum firmiter injungendo mandamus, quod eidem Johanni in præmissis omnibus

^d Rot. eodem memb. eadem. ^e Rot. eodem memb. eadem.

et singulis intendentes sitis & auxiliantes, quotiens et quando per ipsum super hoc fueritis ex parte nostrâ præmoniti. T. ut supra per breve de privato sigillo.

Now by the repetition of the Patent itself here, wherein not one word of this particular is express'd, and by these words *dedimus potestatem, &c.* we have given him power, is plainly set forth and shewed, that this particular, amongst others, was granted under those words, *Constituimus Capitaneum Navigii.* But I shall proceed to another example, where another particular is specified in the body of the Grant with an *ita quod*, after the Constitution it self, which likewise sheweth that that particular was comprehended in the very Constitution, and granted before in the general words: And this is a Patent granted in the 22d year of *Edward* the First, which followeth in these words:

Rex, &c. f universis et singulis Vicecomitibus, Ballivis, Ministris, et fidelibus suis, ad quos, &c. salutem: Sciatis quod constituimus dilectum et fidelem nostrum Willielmum Leybourne Capitaneum nautarum et marinellorum nostrorum Quinque portuum et membrorum eorundem, et similiter Jernemouth, Bayon, Hiberniæ, Walliæ, et omnium aliorum portuum, et locorum, in quibus naves sive battelli applicant infra regnum et potestatem nostram; et etiam militum et aliorum fidelium nostrorum, qui cum ipso per præceptum nostrum in flota navium ipsorum nautarum et marinellorum per partes maritimas et costeras maris contra inimicos nostros sunt profecturi. Ita quod idem Capitaneus per se et alios, quos per literas suas patentes sigillo suo signatas as-

^f Rot. Vofcoyn. an. 22 Ed. 1. memb. 8.

signare,

signare, deputare, destinare voluerit, capere possit, et secum ducere homines idoneos et potentes ad arma, naves, bargeas, et battellas, victualia et alia quæ ad expeditionem eorundem necessaria fuerint, et etiam quòd capere possint armaturas per visum dicti Capitanei, ab illis a quibus idem Capitaneus eas viderit capiendas; dum tamen hujusmodi victualibus et aliis necessariis, quæ ad eorum Capitanei, nautarum, et marinellorum sustentationem sic capta fuerint, satisfaciant illis a quibus ea ceperint, juxta rationabile pretium eorundem, et de armaturis similiter, vel sufficientem securitatem inveniant de ipsis armaturis restituendis. Et ideo vobis omnibus et singulis mandamus, et in fide quâ nobis tenemini præcipimus, firmiter injungentes, quòd prædicto Willielmo tanquam Capitaneo prædictorum nautarum, et marinellorum, militum et aliorum prædictorum, et aliis quos idem Willielmus per literas suas patentes assignaverit et destinaverit, sicut prædictum est, in præmissis omnibus et singulis sitis intendentes, respondentes, auxiliantes, et obediens, prout vobis scire faciet ex parte nostrâ. In cujus, &c. has literas nostras fieri fecimus patentes quamdiu nobis placuerit duraturas. T. R. apud Westm. 7 Junii.

Et § mandatum est Vicecomiti Northumbriæ, quòd prædicto Willielmo tanquam Capitaneo prædictorum nautarum, marinellorum, militum et aliorum prædictorum et aliis quos idem Willielmus per literas suas patentes assignaverit et designaverit, sicut prædictum est, in præmissis omnibus et singulis, sit intendens, respondens, auxilians et obediens, prout eidem Vicecomiti scire faciet ex parte Regis. T. R. apud Westm. 8 die Junii.

§ Ibidem.

Eodem

Eodem modo mandatum est

<i>Vicecom. Ebor.</i>	<i>Vicecom. Southampton</i>
<i>Vicecom. Lincoln.</i>	<i>Vicecom. Somers. et Dor-</i>
<i>Vicecom. Norfol. et</i>	<i>cest.</i>
<i>Suffol.</i>	<i>Vicecom. Devon.</i>
<i>Vicecom. Essex.</i>	<i>Vicecom. Cornub.</i>
<i>Vicecom. Cant.</i>	<i>Vicecom. Gloucest.</i>
<i>Vicecom. Suffex.</i>	<i>Vicecom. Lancast.</i>

Roberto de Tybotot *Justic.* West-Wall. *vel ejus locum tenenti.*

Roberto de Staundon *Justic.* North-Wall, *et ejus locum tenenti.*

Reginaldo de Grey *Justiciario* Cestren. *et ejus locum tenenti.*

The Record sets forth first the Grant in general, which is comprised in the former words thereof, *viz. Constituimus Willielmum Leybourne Capitaneum nautarum et marinellorum nostrorum, militum, etc.*

Then it is declaratory, and specifieth some particulars of his power, which are comprehended under those general words of the Grant, which being not often used or put in execution, might cause some to doubt whether ever they had been used at all or not; and so to question whether such particulars were comprehended in the Grant by those general words or not, being things of so great and high authority and power: Therefore are these words *ita quòd* inserted, which do not import the concession of any further power or authority than what was granted before: But in all manner of reading they intimate that by the consequent

sequent words is understood or shewed either some inherent or adherent power, property, or quality, which is comprehended under the precedent words.

It rests then that these specifical words inserted in this Patent, are only declaratory, that such power and authority doth belong unto that great Officer and Governor of the Seas by virtue of such his Office: For though first the employment begets the Officer, and so consequently the Office, yet when it is become an Office, the very constituting of the Officer, and granting of that Office, is the granting of all the employment that hath belonged thereunto.

These last cited Records do manifest the great power and authority which the great Officers of the Seas had, and hath over all manner of Shipping, Ships, Boats, and Barges whatsoever, within the limits of his Jurisdiction, and over all manner of men, ammunition, victual, tackle, and furniture thereunto belonging; and the power and authority he had and hath over all Sheriffs, Bailiffs, and other ministerial Officers who were and are to be attendant, aiding, assisting, and obedient unto his and his Deputies Commands in the execution of the Office of so great power and trust; yea, and they were and are to be so attendant and obedient, in regard and respect of the Office it self; for the Records do run with an *ideo, therefore*: As *Constituimus N. Capitaneum et Admirallum, etc. vel similiter: Ideo vobis mandamus, etc. quod prædicto N. Capitano, etc. in omnibus et singulis sitis intendentes, etc.*

The Governor of the Seas having then with the assistance and obedience of these other Officers, had so strong a power, and full authority and jurisdiction from the King himself, over all these things,

things, who else could have any thing to do therewith, or with any differences, debates, controversies, or whatsoever else arising from or concerning the same ?

C H A P. III.

That the Ports and Havens, and Creeks of the Sea, are within the Jurisdiction of the Admiralty.

IT is affirmed by some, whereof that most famous Lawyer Sir *Edward Coke* is one, that the Ports, Creeks, and Havens of the Sea are within the bodies of the Counties, and are not within the Jurisdiction of the Admiralty. His bare assertion in his own learning may (I confess) very well pass for authority ; but in the decision of this matter, between that Jurisdiction he himself exercised according to the municipal Laws of this Nation, and whereof he himself was a Professor, and a Judge ; and that other Jurisdiction exercised by a Professor of another Law so distinct and different from his, viz. the Civil and Maritime Laws ; he hath in my judgement, shewn himself extremely partial and much different in opinion from some others which sate in his place before him, as I shall plainly shew hereafter : And I must confess it sounds very strangely in my ears, to hear that which hath ever since the Sea was called the Sea been called an arm of the Sea, now called an arm of the Land, or an arm of a County, or the part of the body of a County ; much less then will it sink into my understanding how it comes to be in
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the body or heart of a County, when for the most part it separateth one County from another. But it hath been an antient assertion and observation, that where any land or ground is gained from the the sea in one part or on one side thereof, the sea doth gain as much upon the land in some other part, or on the other side thereof: And so it seems the Sea hath gained upon the land of all or most other Nations on the other side and beyond the Seas, in-
somuch that their Admiralties swell, and the sweetness of that gain and profit they reap by Sea-trade and Commerce with other Nations, hath caused them to add daily new privileges thereunto, rather than to diminish or take away any of the old. And *England* instead of what the Sea hath gained upon the land of other Nations, hath gain'd upon the Sea; and being less considerate or careful of the commodity and gain the Sea-trade and Traffick bringeth it in, had once well-nigh quite destroyed that antient Jurisdiction, which is not yet quiet, but continually spurned and kicked at: for put all that together which Sir *Edward Coke* would prove, and some that have followed him would approve, and they would leave the Admiralty very little or no Jurisdiction at all, and but little more than a bare and naked title, as shall hereafter be shewed.

And it would have sounded as strangely to me to have heard of ships lying and riding at anchor within the body of a County, but that I have heretofore often heard of their often riding and lying at Anchor in *Parochiâ Sanctæ Mariæ de Bow* in *Wardâ de Cheap*.

The Arguments that are by him used for the proof of this particular, that the Ports and Havens are within the bodies of Counties, are confounded with those whereby he endeavoureth to

prove the Admiralty to have no Jurisdiction within those Ports, Havens and Creeks; and what is used for the proof of the one is used for the proof of the other, and will come to be considered altogether. Yet when he hath used all his arguments to prove these his assertions, out of his ingenuity confesseth the antiquity of this Jurisdiction to be fetched from far more antient times than the reign of ^a *Edward* the Third, in whose days (as he saith) some have dreamed it began. And for proof hereof he sets down word for word (as he saith) the Libel, (which I have before quoted out of the Tower Roll, and is likewise quoted by Mr. *Selden*) of *Edward* the First's time.

And after that, ^b to shew that of antient times there were several Admirals, for that (as he affirmeth) the wisdom of those days would not trust one man with so great a charge, nor any man to have a certain estate in an Office of so great trust, he sets forth several of those Records which I have cited before out of the Tower Rolls, for proof of the antiquity of that Jurisdiction, none of them serving at all to his former purpose, but some of them may very well serve against it; as that of the 15th year of *Henry* the Third, which he setteth forth thus,

Petrus Ryvale Capitaneus Pictaniæ habet ad totam vitam suam custodiam omnium portuum, et totius costeræ marinæ Angliæ, excepto portu de Dover, qui est in custodiâ ^c Huberti de Burgo.

So that he reckoneth this man amongst the Admirals, (as indeed he could do no less, he having that office and place) and he doth acknowledge, that by his Patent he had *custodiam omnium portuum et totius costeræ marinæ*. Now to have *cust-*

^a Coke Jurisdic. of Courts, cap. 22.
^c Rot. an. 15 H. 3.

^b Idem ibid.

diam portuum, and to have no Jurisdiction or power in *portibus*, can in no man's judgment seem less than a plain contradiction.

And in like manner he quoteth another of the 25th of *Edward* the First to the very same purpose, which runneth thus.

Johannes Botetort *custos Regis portuum maritimorum, versus partes* ^a *Boreales* 25 Martii. Now will any man say that *John Botetort* was the King's Keeper of his Maritime Ports, and yet aver that they are no part of his Jurisdiction, or affirm that he had nothing to do therein or therewith? Surely they be called *portus maritimi*, which are Ports belonging to the Sea, and Ports so far from being within the bodies of Counties that they do not so much as belong thereunto; they are *portus maritimi*, Ports of the Sea or belonging to the Sea, or, which warranteth our vulgar language, the Sea-ports, and are not part of either Land or County, or of or belonging thereunto, and are absolutely and properly the Homogeneal parts of that *Homogeneum totum*, the Sea, and no Heterogeneal parts of the Land, as the fresh water Rivers springing out of the land, and contained in the bodies of the Counties thereof, are.

He instanceth in another Record of the 10th of *Edward* the Second (as he saith) but indeed is the 19th, which he setteth forth in these words.

Nicholaus Kyriell ^e *constituitur Admirallus flote omnium navium, etc. tam Quinque portuum, quam aliorum portuum et locorum per costeram maris versus partes Occidentales, quamdiu Regi placuerit. Teste Rege apud Turr. London 8 Decembris.*

And another of the first of *Edward* the Third, which runneth thus:

^a An 25 Ed. 1. prima parte pat. m. 9.
1 parte pat. m. 12.

^e An 19 Ed. 2.

Warroſius de Valloignes *conſtituitur Capitaneus et Admirallus flotæ navium, etc. tam Quinque portuum, quam aliorum portuum et locorum, per coſteram maris verſus partes* ^f *Occidentales, quamdiu, etc. ut ſupra.*

The two former Records were, one of them in the Reign of King *Henry* the Third, the other in the Reign of *Edward* the Firſt; and theſe two are one of them in the Reign of *Edward* the Second, and the other in the firſt year of *Edward* the Third: And indeed moſt of the Records which are in the Reign of theſe four Kings, (*viz.* *Henry* the Third, and the three *Edwards*) which concern the grant of this great Office are of the ſame Nature with theſe four, and run in ſuch like, or in the very ſame words with theſe but more eſpecially, and moſt frequently agreeable to theſe two laſt; and ſo do moſt of thoſe ^g Grants which were in *Henry* the Fourth's time, as may appear where I have ſet them down in order.

And theſe may bear a double conſtruction, and two ſeveral ſenſes and meanings, but not ſo different but that the beſt of them that can be made for the Quoter of them will ſerve to confute and deſtroy his new ſet up opinion and aſſertion.

Take this conſtruction firſt and read them in this ſenſe, *Conſtituitur Capitaneus et Admirallus flotæ omnium navium, etc. Capitaneus et Admirallus tam Quinque portuum quàm aliorum portuum, et Capitaneus et Admirallus omnium aliorum locorum per coſteram maris*: That he is Captain and Admiral of the Fleet of all Ships; Captain and Admiral as well of the Cinque Ports, as of all other Ports, and Captain and Admiral of all other

^f An. 1 E. 3^e 1 parte pa. m. 21.
cap. 1.

^g Supra lib. 1.

places by the Sea coasts towards the Western parts.

And the first two Records of these four by him cited for concordancy and agreement sake, do warrant this construction; and that the same may be made of the words, as without any incongruity or trespass at all upon *Priscian*, so without any falshood at all of the matter: For the first two Records, the one giving the Admiral *Custodiam omnium portuum et totius costeræ maris*: And the other making him *Custodem Regis portuum maritimarum*, do warrant the truth thereof: And then are these two last a confirmation of the two first, and argue the same thing, besides what else may be gathered out of them, against the truth of that assertion. For certainly he that had *Custodiam portuum*, and was *Custos Regis portuum*, had the rule, governance, and ordering of all things in or belonging unto those Ports, and that by way of Judicature, according to the Civil and Maritime Laws; for its plain by the Libel Sir *Edward Coke* himself hath set down, which I formerly quoted, ^h that these Admirals in these times had *Δικαιοσύνην, Jurisdictionem sive potestatem audiendi & determinandi causas secundum jus*, as I have said ⁱ before; or take the words as they run in the Patents themselves, viz. *Rex omnibus ad quos, etc. salutem. Sciatis quod nos de fidelitate probatâ et circumspeditione providâ dilecti et fidelis nostri N. plenariè confidentes, constituimus ipsum N. Capitaneum et Admirallum flotæ nostræ, omnium navium, etc. tam Quinque portuum quàm aliorum portuum et locorum per costeram maris versus partes, etc.* And afford them what construction can possibly be

^h Sup. lib. 1. cap. 5. mentionat. in ipsissimis verbis repetit.

ⁱ Sup. lib. 2. cap. 1. et lib. 1. cap. 1.

strained out of them to save this assertion harmless, yet will it thereby be scattered and torn all to pieces.

Take it then in this construction, *viz.* We make him Captain and Admiral of our Fleet of all Ships of all Ports, as of or belonging to all Ports, &c. will any man say that he that is Admiral of all these Ships that belong unto these Ports, is not Admiral of them whilst they lye or ride at Anchor within those Ports, and are not riding *super alto mari*? and that he hath not the rule, governance, and command over them whilst they lye there? If so, let him say likewise he hath no power, governance, or command over them until he find or take them upon the main sea, which Ships he never took out of those Ports or any other.

The Admiral therefore must have Jurisdiction and Power upon the Creeks, Ports, and Havens, or else his Power at sea will come to little or nothing. I shall give you here but one instance which will shew the necessity of his having Jurisdiction upon the Ports and Havens as well as upon the high Seas.

If one Ship shall do damage to another either upon the main Sea, or upon any Creek, Port, or Haven, the damages must be sued for in the Admiralty Court, and judgment given according to the Maritime Laws, which prescribe every Ship her rule how to steer her course, both going out to Sea, or coming home from Sea, or riding at Sea; which plainly demonstrateth which Ship was in fault, by which the Judgment must be regulated, for which the Common Law hath no rules at all, nor can any action properly by the rules thereof be commenced at that Law for these damages: For that the Owners damnified can very
hardly

hardly arrest all the Owners of the other Ship which did the damage: nor indeed can any of those Owners by that Law, as I have been by some of the learned of that profession informed, be liable to such arrest, but the Master only; who, if solvent, will not come on shore, but take his employment in some other Ship outward bound; if not solvent, the arrest will be to little purpose: so that the remedy lieth only against the Ship by the Civil and Maritime Laws, according to the course thereof, which proceedeth in cases of this nature by way of several defaults, &c. which either will bring in the Owners to answer the Action, or make the Ship liable to make satisfaction for the damage done, in so much as she is worth; which course of proceedings the Common Law hath not.

C H A P. IV.

The Arguments deduced out of the Statute Law, to prove the Ports, Havens, and Creeks of the Sea, to be within the bodies of Counties, and not within the Jurisdiction of the Admiralty, redargued.

HAD this been but a bare assertion, that the Ports, Havens and Creeks of the Sea are within the bodies of Counties, and not within the Jurisdiction of the Admiralty, more needed not (I conceive) have been said than what hath been already said, in the former chapter: But the Arguments that are used for proof thereof, will necessarily require a far larger discourse for answer thereunto, and further confirmation of the contrary:

For here I am to encounter a great Antagonist, the forementioned Sir *Edward Coke*, sometime Lord Chief Justice of the King's Bench, a man most famous for his knowledge and pains in the Laws of this Nation, whose memory undoubtedly is still not undeservedly honoured: yet though my encounter be upon this disadvantage, I doubt not but to give satisfaction to a Judge indifferent between both Jurisdictions and Professions, as well in this point, as in some other things by him asserted.

For the proof of this point, he first asserteth the Statute of the fifth of ^a *Elizabeth*, cap. 5. which (saith he) describeth particularly the limits of the Lord Admirals Jurisdiction, in these words: All and every such of the said offences before mentioned, as hereafter shall be done on the main Sea, or coasts of the Sea, being no part of the body of any County of this Nation, and without the Precinct, Jurisdiction, and Liberty of the Cinque-ports, or without any Haven or Pier, shall be tried and determined before the Lord Admiral, &c. So as (saith he) by the judgment of the whole Parliament, the Jurisdiction of the Lord Admiral is wholly confined to the main Sea, or Coasts of the Sea, being no parcel of the body of any County of this Nation.

In answer hereunto, I do deny that these words in this Statute do prescribe particularly the limits of the Lord Admirals Jurisdiction, if he mean his whole Jurisdiction in general: but I will confess they do prescribe him certain limits, *quoad* the increase of his Jurisdiction, by making the particular acts before mentioned in the Statute, to be offences, and punishable, and do declare that his,

^a Eliz. 5. c. 5.

and the Warden of the Cinque-ports Jurisdiction upon the main Sea, shall be increased, by having granted unto them the cognizance of such of the before mentioned offences as should be committed thereupon, and do restrain his Jurisdiction within the Ports and Havens to what formerly it had, without having any increase thereof by the Cognizance of such the before mentioned offences, as should be committed thereupon; and this appeareth plainly out of the words by himself recited, *viz.* All and every such of the said offences before mentioned shall be triable thus and thus, not having any relation unto any offences, or causes triable, either before the Admiral, or cognoscible by any other Judge.

And indeed if we look backward to those offences before mentioned in the Statute, which can be committed in or about the Havens or Ports, we shall find that they are not of the nature of such Civil and Maritime causes, or offences, as are subject unto that Jurisdiction of the Admiralty. The particulars are these:

1. That any Subject may carry Sea-fish forth of the Realm in any of the Queen's Subjects Ships, without paying Custom.

Now we know very well that the paying of Custom in every Port Town belongeth to a peculiar Office for that purpose, and the Admiral neither doth, nor did for many years meddle therewith.

2. That no Person in any Port, City, Town, Market, or other place, shall set price, make restraint, take or demand Toll, or Tax of any Sea-fish to be brought into this Nation, being taken and brought in in Subjects Ships.

Here Port is taken for the Port-town, or Haven-town: for the prising, taxing, and tolling of
Com-

Commodities is done upon the land, after the goods are unladen, and not whilst they are aboard the Ship or Vessel, and therein so stowed, as that they can neither be numbred, weighed, nor viewed. And the Port-town is here only collectively named with other Cities, Towns, Markets, and Places, (as appeareth plainly by the words of the Statute, as they run together) to include all sorts of Towns; nor doth, nor ever did the Admiral any more meddle with the prising, taxing, or tolling of Commodities within any such Towns, more than he doth or did with the Customs thereof.

3. That no Purveyors should take any Sea-fish, brought in such Ships, under the forfeiture of the double value.

4. That no man shall buy of any Stranger, or out of any Stranger's Bottom any Herring, or other Sea-fish not salted, packed or casked, under pain of the forfeiture of the fish so bought, or the value thereof.

5. That no Wares may be carried from any Port of this Realm to another.

6. That all Cod and Lings be brought into this Realm loose, and not in barrels.

7. That no Wine be brought forth of *France*, nor any Wood brought into *England* but in *English* bottoms, all under pain of forfeiture: And being so, they are by this Statute become to be of the nature of prohibited Commodities; for discovery whereof, there be in all Ports certain Searchers appointed which bring the same under forfeiture; and the Admiral deals not therewith, but only with such prohibited Commodities as are prohibited to be transported beyond the seas, and are *de facto* so transported, having escaped the Searcher's hands. And in such cases the Admiralty hath the power of punishing such as have so
offended;

offended; for that the fact cannot be made appear but by examination thereof by way of Commission out of the Admiralty in the place where the said goods were unladen and landed.

The restraint therefore upon the Admiral and Warden of the Cinque-ports by this Statute in these cases, is, lest they, having Jurisdiction as well upon the Havens and Ports of the sea, being parts and members thereof, as upon the main sea, should *ampliare jurisdictionem*, and take the cognizance of these things to their Courts, and abridge the Customs and searchers of that power which belongeth unto their offices and places.

And indeed this restraint in this Statute upon the Lord Admiral, the Judge of the Admiralty Court, and their Surrogates, and upon the Lord Warden of the Cinque-ports and his Lieutenants, is a strong argument that in other matters they have full power, governance, and cognizance upon the Ports and Havens, as well as upon the main sea; otherwise needed not these particular offences to have been excepted from their power and cognizance there: and this exception of these particulars from their cognizance there, concludeth other things in general there done to belong thereunto; for *quicquid accipitur in particulari, præsumitur esse in generali*: The Admiral's cognizance upon the Ports and Havens is by this Statute excepted from these particular offences there done, and is therefore presumed to be full in other general offences thereupon committed, and not otherwise excepted therefrom. And other rules there be that confirm this Argument, as that, *Id à quo fit exceptio, fit universale, ut possit distribui*: These particular offences are excepted from the Admiral's cognizance upon the Ports and Havens: and therefore his cognizance there must be universal; so that
from

from that universal cognizance there, these particulars may be excepted and divided. And, *Id quod excipitur, seu subjectum exceptum, debet contineri sub excipiente, seu eo à quo excipitur*: and again: *Quod excipitur debet esse angustius eo à quo excipitur*.

And further, the restraining of the Admiral's Jurisdiction from meddling with these particulars, upon the Ports and Havens, doth not restrain his power from meddling with other matters or offences done, and committed thereon; for the barring of his cognizance of these particulars there, is but a limitation of his general power there; *Et omnis limitatio fit per id quod subjecto aut prædicato congruenter ineft*.

For the Argument then, that is deduced from this Statute, which concludeth that the limits of the Lord Admiral's Jurisdiction are thereby described, and by the judgment of the whole Parliament (as is asserted) confined unto the main sea, or coasts of the sea, there is no other question to be made of it, than whether it shall overthrow and destroy all these Logical rules, or they it. Another answer may be given to this argument, by distinguishing upon the word Port or Haven, as it is taken in a double construction, and beareth a double acceptance, warranted by Mr. Serjeant Callis in his ^b Reading at *Grey's-Inn* 1622. upon the Statute of *Sewers* 23 H. 8. cap. 5. who in his first Lecture, to the diversity between a Creek, Haven and Port, p. 24, 25. saith that a Haven properly is a safe place of harbour for Ships, but may be without any privilege at all; and then maketh mention of such as are always graced with legal privileges; and for this he quoteth the

^b Callis in Lect. apud Hosp. Graii super stat. 23 H. 8. ca. 5. an. 1622.

Statute of *Magna Charta*, in these words: *Quod omnes communitates et Barones de quinque portibus, et omnes alii portus, habeant omnes libertates et liberas consuetudines*: that all common Societies of Ports, and Barons of the Cinque-ports, and all other Ports may have their liberties, &c. which can be no otherwise understood, than that thereby is meant the common Societies of Port-towns, the Barons of the five principal Port-towns, and all other Port-towns may have their privileges, &c. so that a Port-town is ordinarily termed a Port, as well as the Port itself; and so is a Haven Town, &c. though not so properly. And the words of the Statute (saith he) confirm my former definition of Ports to be true; and this is his definition: A Port is a harbour, and safe arrival for Ships, Boats, and Ballengers of burden, to freight and unfreight them at, not in: so that we see that he maketh the Haven where Ships lie at anchor, to be a Port, and the Town whereat they lade and unlade, to be a Port; and so the same Author maketh *cofteram maris* to contain the shore and banks, as well as that part of the sea adjoining thereunto: and he proveth it out of the Statute 27 of *Eliz. cap. 24.* which Act was made for the mending of the banks and sea-works on the sea-coast. And out of the 7th chapter of *Maccabees*, where *Demetrius* Son of *Seleucus* came to a City of the sea-coast, &c. *ut in ejus libro, p. 32.* so that in common acceptance the places adjoining to the Sea-coasts for their adjacency, are called and taken for Coasts, as well as the Coasts themselves; and the Towns or Cities adjoining to the Ports, for their adjacency, are termed Ports as well as the Ports themselves: and then it may very well be answered, that the words in this Statute, *out of any Haven or Port*, are meant of the City or Town thereunto adjoining,
and

and so called : and this, the offences in that Statute mentioned, unto which this clause hath reference and relation, will warrant. But more I shall not say concerning this argument, but shall come to that which the same Author further inferreth upon his own conclusion, whenas his premisses can no way be granted ; which is that of *Job* the 38th chapter, the 8, 10, 11. verses, That Almighty God (as he himself out of a whirlwind spake) hath shut up the sea within certain doors or bounds : *Quis conclusit mare ostiis, quando erumpebat quasi de vulvâ procedens ? Circumdedi illud terminis meis, et posui vectem et ostia, et dixi, Usque huc venies, et non procedes amplius, et hâc confringes tumentes fluctus tuos.*

Hence I do conceive that he would infer, that God then put the doors of the Seas, where he himself by his interpretation of this Statute would now put them, between the high Seas and the Ports and Havens. But then he must have said, that when God put them there, he then left them wipe open, and never shut them since ; for sure I am the sea was never yet shut out of the Ports and Havens, if we mean the Ports and Havens where ships do ride, or lie at anchor ; and not the Port or Haven Towns so termed, by reason of their adjacency so near unto them. Nor can it be allowed by what is here urged, that there they were put standing wide open : for he that saith *posui vectem et ostia*, saith *et dixi, Usque huc venies, et non amplius.*

So that we see his doctrine suits not to this text ; but the text itself may very well serve for my purpose, that God himself hath put the gates and doors of the sea, and hath himself appointed its limits and bounds to be those, within which it is by his own power terminated.

And look how far it extendeth itself, so far it is sea; and there, and no where but there, hath God placed these gates and doors, and terminated its limits and bounds by man unalterable.

C H A P. V.

The Arguments deduced from the first Judgment at the Common Law, that the Ports and Havens of the Seas are within bodies of Counties, redargued.

Other arguments there are by Sir *Edward Coke*, deduced out of the Judgments and Judicial Precedents at the Common Law. I shall first begin with the Judgments.

And the first that he urgeth, is a Judgment given in the Court of Common Pleas, *Hil. 6 H. 6. Rot. 303.* between *John Burton* Plaintiff, and *Bartholomew Put* Defendant; and the Case was (saith he) upon the ^a Statutes of the 13 *Rich. 2. cap. 5.* the 15 *Rich. 2. cap. 3.* and the Statute of the 2 *Hen. 4. cap. 11.* ^b upon which Statutes the said *Bartholomew* having sued the said *John Burton* in the Admiralty Court before *Thomas Duke of Exeter*, then Admiral of *England*, for that the said *John Burton* with force and arms the 2d day of *September*, anno 1 *H. 6.* ^c three ships of the said *Bartholomew's*, with his Prisoners and Merchandises, to the value of 960 marks, 5 s. 5 d. ob. in the same ships being, did take and carry away, supposing by his Libel the same to be taken away *super altum mare*, upon the high sea, Judgment was given

^a *Coke Jurisd. of Courts, ca. 22.*
5: 15 R. 2. ca. 3. & 2 H. 4. ca. 11.

^b Stat. 13 R. 2. cap.
^c An. 1 H. 6.

that

that the taking aforesaid was *infra corpus comitatûs* in *Bristol*, the said ships lying in the Haven of *Bristol*, and not upon the high sea, contrary to the form and effect of the said Statutes ; the parties having descended to an Issue, which was found for the Plaintiff, and damages to 700 *l.* And this is the Judgment he quoteth, *Et super hoc audito tam recordo quam veredicto prædicto, et per curiam plenius intellexit. consideratum est, quòd prædictus Johannes Burton recuperet versus præfatum Bartholomeum damna sua prædicta occasione attachiamenti prosecutionis, & vexationis, quàm missarum et custagiorum ad septuaginta libras per juratores prædictos superius assess. in duplum per Statutum, &c. Quædamna in duplo se extendunt ad mille et 400 l. Et eidem Barthol. pœnam decem librarum erga Dom. Regem nunc per statutum incurrat et capiatur, &c. querens remittit 400 l.*

And he saith that it appeareth by the Record, that this being the first Case that can yet be found, that received judgment in the Court of Common Pleas upon the said Statutes, and that the same depended in advisement and deliberation eight Terms, whereby it plainly appears (the time being computed from the making of the said Statutes, whereon this Action was grounded, to the time of the Judgment 6 *Hen. 6.*) that the Courts of Common Law had not for above 20 years after the making of these Statutes, ever meddled with causes of this nature. Nor can it (I am confident) be found that cases of this nature were any of those cases wherein the Admirals had incroached upon the Common Law, before the making of the said Statutes ; and what ground these Statutes then gave them for this Judgment, I could wish he had reported with the Judgment itself. The Statutes I have endeavoured (to the utmost of my weak skill)

to examine one by one, but cannot find that in such cases as this the Admiralty was by them in any wise prohibited to proceed: of which Examination of mine, I shall hereafter render the best account I can, more especially when I come to treat of Contracts made at land of and concerning maritime and sea affairs^d; but I must here in the first place examine the observations by Sir *Edward Coke* himself, gathered out of this Judgment.

From the whole he gathereth these four observations.

1. That it is *contemporanea expositio*, being made within twenty years of the making of one of the said Statutes; and he saith that *contemporanea expositio est optima*.

2. That albeit the said three Ships, with the Prisoners and Merchandizes in them, lay in the Haven *inter fluxum et refluxum aquæ*, and *infra primos pontes*, yet that the Haven is *infra corpus Comitatus*, and that for taking of the Ships, with the Prisoners and Merchandizes in the same, no Suit ought to be had in the Admiralty Court, but at the Common Law.

3. That the Court of Admiralty hath no Jurisdiction, but *super altum mare*, which is not within any County; for the Record saith (as he averreth) that the said three Ships, with the Prisoners and Merchandizes in the same, did lie *infra Comitatus Bristolæ*, *et non super altum mare*, as the Plaintiff in the Admiralty Court supposed the same to be.

4. That this Judgment so solemnly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point: for, saith he, *Judicium est tanquam juris dictum, et judicium pro veritate accipitur*.

^d *Infra*, lib. 3. cap. 2.

I conceive that by two of these four observations (the first and the last) he endeavoureth to prove that this Judgment is a good Judgment, which ought to be observed ever after for Law ; which if he hath thereby proved, the other two (the second and third) may be deduced into some conclusion, otherwise not. He then that will examine the argument comprehended in these two observations, must deduce it thus (or else he shall find no argument therein at all) *viz.* a Judgment given *per contemporaneam expositionem* of a Statute or Statutes made within twenty years after the making of one of them, and that solemnly upon two years advisement given, is a good Judgment ; which ought ever after to be observed for Law. But this Judgment was given by a contemporary exposition of the said Statutes, made within twenty years after the making of one of them, and that solemnly with advisement by the space of two years ; therefore this Judgment is to be observed for Law ever after : then will the other two observations be easily deduced into a conclusion, otherwise not. But I must crave leave that without offence I may call into question the truth of the premisses, out of which this conclusion is deduced.

First then, whether a Judgment given *per contemporaneam expositionem* of a Statute made within the space of twenty years next before such interpretation or exposition (though solemnly advised on by the space of eight Terms, which is two whole years) must necessarily be ever after observed for law, is that which first cometh in question. Under correction I conceive that neither the time of such interpretation or exposition-making, nor the deliberate advisement thereupon, conclude this necessity, that the Judgment thence proceeding must be
ever

ever after observed ; nay, I conceive it ought not ever after, or at all to be observed, unless such exposition be grounded upon both law and reason, or at least one of them.

This is said to be the first and leading Case, and so the first exposition of those three before mentioned Statutes made to this purpose : and therefore the law and reason whereupon such exposition had its ground and foundation, might very well have been expected to have been there by him set down, where the Judgment itself is urged ; but finding neither, I have according to my weak abilities endeavoured to search both or either of them out ; but indeed am so thick-sighted, that I can find out neither the one nor the other to warrant the same.

The Statute of the 5 *Eliz.* 5. before * mentioned and urged for the proof of this assertion might, had it been made before this exposition of the other three, have set some colour thereon, but no more than a colour : for there is nothing therein contained substantial, that could have afforded this interpretation of the other three ; but coming after this interpretation, this interpretation hath lost that colour, and is left upon the Statutes themselves ; wherein I, for my part, cannot find one word that doth seem so much as to lead toward any such exposition or interpretation.

The first of them is that of the 13 *Rich.* 2. 5. which Statute hath relation unto a Petition upon which the interpretation thereof ought to be grounded, according to the manner of making Acts in those days ; which Petition in other Acts is inserted as a preamble to the Act itself ; but in this is premised only in part, and that not truly rendred by the Translation (as shall appear when

* *Supra*, cap. 2. hujus 2. lib. super eod. cap.

we come to treat of Contracts made at land for^f sea affairs) the Statute it self runneth thus.

Le Roy voit que les Admiralls et leur deputees ne sic mellent de sore ana vant de nul chose fait deins le Roylme messolement de chose fait sur le meer solonc ce que ad estre duement use en temps du noble Roy Edward ail nostre snr^r. le Roy quorust.

The King's pleasure is, that the Admirals and their Deputies shall not from henceforth so meddle (*viz.* as is complained of in the Petition) of any thing done within the Realm, but only of a thing done upon the Sea.

Here *sur le meer*, I hope shall not be taken for *super altum mare*, when as the Statute is so absolutely free from distinguishing any one part of the sea from the other, or limiting the Admiral's Jurisdiction unto one part thereof, more than to another; but leaveth all to his cognizance, *Solonc ce que ad estre duement use en temps du noble Roy Edward ail nostre snr^r le Roy quorust*, according to that which had been duly used in the time of *Edward* the Grandfather of the then King, which was *Edward* the third. Now do not I find, nor do I believe that either the makers of this Exposition or their followers, can find that the Admiral's Jurisdiction was in any part of *Edward* the Third's time restrained to the main Sea, by any such distinguishing between the main Sea and the Ports and Havens where all sea busineses are agitated. But this I am sure of, that by the Records throughout his Reign the Admirals were *Capitanei et Admiralli omnium portuum et locorum per costeram maris* (as hath already been shewed) as well as of the main Sea; and by other more antient Records (as hath been likewise shewed) they were as well

^f *Infra*, lib. 3. cap. 2. ^g *Supra*, cap. 3. *hujus secundi lib. & cap. 1. lib. primi.*

Custodes marinæ et maritimorum portuum, &c. as *Custodes maris*. And it is plain that in Edward the Third's time, they had *plenam potestatem audiendi querelas omnium et singulorum de his quæ officium Admiralli tangunt*; and likewise ^h *cognoscendi in causis maritimis, &c.* in causes belonging to the Sea: *In causis quæ oriuntur ex maritimis negotiis*, without any limitation or restraint to one part or other thereof.

The second Statute is that of the 15th of R. 2. 3. which Statute hath two parts: the first considereth the Admiral's Jurisdiction *exclusive*, what things he shall not have cognizance of; and it concerneth Contracts, Pleas, and Complaints, and other things done, arising within the bodies of Counties, as well by land as by water, (and wreck of sea) which will come to be ⁱ treated of hereafter. The second part considereth his Jurisdiction *inclusive*, retaining and upholding the same within the limits thereof: And in regard the Sea floweth sometimes further, and sometimes shorter upon the great Rivers, leaving the extent of the Admiral's Jurisdiction somewhat uncertain, it therefore reduceth it to a certainty, setting forth how far it shall extend, notwithstanding it is said in the former part (as well by land as by water) and distinguisheth how far the water is to be taken to be within the bodies of Counties, and how far not, which followeth in these words: *Nientmeyns de mort de home et de makeym faitz en grosses niefs est eantz et houvantz en my le haut fil des grosses Rivers, tant solent per a vale les pontz de mesme; les rivers pluis procheys al meer, et en nul autre lieu de mesmes lez rivers eiet la Admirall conifance et*

^h Rot. an. 35 E. 3. prima parte pat. m. 32. præcitat. in cap. 1. lib. primi. ⁱ Infra, lib. 3. cap. 5.

auxint darest des niefs en les grant flotes pur grants voyages du Roy et de Roylme, &c. Nevertheless of the death of a man, and a maim done in great Ships, being and hovering in the main stream of great rivers, only beneath those Bridges of the same rivers which are nearest to the sea, and in no other places of the same rivers, the Admiral shall have cognizance, and also to arrest Ships in great Floats for great voyages for the King and the Realm, &c.

Here the Bridges next to the sea by this Statute are appointed and put for the limits to terminate each Jurisdiction, the one above, and the other below ; and I cannot think that any man can conceive that the expressing of some particulars cognoscible in the Admiral's Court, doth restrain his cognizance unto those particulars only : for certainly those particulars in the reading of this Statute must and are emphatically express'd, and so understood, as expressing that he shall have cognizance below those Bridges, even of things of the highest nature belonging unto the cognizance of any Judge, even of the death and maim of a man ; yea, and shall have power to arrest great Ships for the King's service, and take them out of the hands and possession of the owners or freighters of them, to what necessitous end soever designed, no ways at all excluding his cognizance of things of a meaner and inferior ^k nature, but is thereby a confirmation of his cognizance in such things, and the causes concerning them : *nam si majus est, etiam minus erit ; et cui majus convenit, etiam minus*, is a general rule : If one be stricken on the sea, and die on the land, the Common Law can-

^k For the word *only* is not to be referred to any thing but to the first bridges, and not the precedent words and things.

not try this ¹ murder. And Mr. Serjeant *Callis* in his Reading giveth this reason thereof, that all Trials at the Common Law are to be by Jury, which must come out of a proper County; which in this case cannot be, the Sea being in no County.

This being the reason, doubtless the Ports and Havens at the time of the making of this Statute were not accounted to be within the bodies of Counties; for if they had, the Jury might have been summoned out of that County, in whose body the Port and Haven lay, whereon the death and maim of a man should happen, for to have tried the same: but the Ports and Havens being not within the bodies of Counties, so that the death and maim of a man thereon could not be tried by a Jury summoned out of a proper County, according to the course of the Common Law; therefore in expresse terms was the trial thereof appointed unto the Admiral, who even in such cases then proceeded according to the rules of the Civil Law, by which no Jury was required, but so much the more exact proof.

The same reason then, which is the reason that such an Act done at Sea could not be triable by the Law of the Land, must be the reason why the like Act done upon any Port or Haven should be triable by the Civil Law, and not by that Law. But I shall proceed further to make it more plain, that this Statute neither did, nor doth limit the Admiral to the cognizance of those particulars only which are mentioned therein to be done or happen below the first Bridges upon the Ports and Havens.

¹ Lacy's case.

All Causes both Criminal and Civil, which have arisen from things done or happening upon Ports and Havens as before, so ever since the making of this Statute (excepting the interruption made by this Judgment, and some others which have hence sprang) have been triable and tried by and before the Admirals, their Lieutenants and Judges of the Admiralty Court, according to the rules and grounds of the Civil and Maritime Laws, as will hereafter ⁱ plainly appear, until the 28th year of *Henry* the Eighth, in which year a Statute was made which affirmeth this very assertion *quoad criminalia* in these words.

Where Traytors, Pirates, Thieves, Robbers, Murderers, and Confederates upon the Sea, many times escaped unpunished, because the tryal of their offences heretofore hath been ordered, judged, and determined before the Admiral or his Lieutenant, or Commissary, after the course of the Civil Law, the nature whereof is, that before any Judgment of death can be given against the offenders, either they must plainly confess their offences (which they will never do without torture or pains) or else their offences to be so plainly and directly proved by witnesses indifferent, such as saw their offences committed, which cannot be gotten but by chance at few times, because such offenders commit their offences upon the Sea, and many

ⁱ *Infra* cap. 9, 10, 11, 12, 13. *hujus lib.* 2. et cap. 1. lib. 3. ac etiam cap. 3. et 4 *ejusdem libri* 3.

times murder and kill such persons being in the Ship or Boat where they commit their offences, which should witness against them in that behalf, and also such as should bear witness, be commonly Mariners, and Shipmen, which because of their often voyages and passages on the Seas, depart without long tarrying and protraction of time, to the great cost and charges as well of the King's Highness, as such as would pursue such offenders. For reformation whereof be it enacted by the Authority of this present Parliament, That all Treasons, Felonies, Robberies, Murders and Confederacies hereafter to be committed in or upon the Sea or in any other Haven, River, Creek, or Place where the Admiral or Admirals have or pretend to have Power, Authority or Jurisdiction, shall be enquired, tryed, heard, determined and adjudged in such Shires and Places in the Realm, as shall be limited by the King's Commission or Commissions to be directed for the same in the like form and condition, as if any such offence or offences had been committed or done in or upon the Land, and such Commissioners shall be had under the King's Great Seal directed to the Admiral or Admirals, or to his or their Lieutenant, Deputy, or Deputies, and to three or four such other substantial persons as shall be named and appointed by the Lord Chancellor

cellor of England for the time being, from time to time, and as oft as need shall require, to hear and determine such offences after the common course of the Laws of this Land used for Treasons, Felonies, Robberies, Murders, and Confederacies of the same done and committed upon the land within this Realm.

This Statute plainly sheweth, that before the making thereof, the offences of all Traitors, Pirates, Thieves, Robbers and their Confederates, done or committed upon the Sea, without distinguishing the main Sea from the Ports, Creeks, and Havens thereof, or excluding them therefrom, as well as the offences of Murderers and Maimers of men were ordered, judged, and determined before the Admiral, his Lieutenant or Commissary : Nay, by the reason given in this Statute for the alteration * of this Trial, the Ports and Havens do appear to be comprehended in the word *Sea*, where it is said that many times the offenders do murder and kill such persons, and the Witnesses being in the Ship or Boat, where they commit their offences, which should witness against them in that behalf. Now surely all the said offences which were done or committed in Ships or Boats, and were cognizable before the Admiral or his Lieutenant or Commissary might be, and were committed as well in Ships and Boats, which did ride or lie at anchor within the Havens, Creeks, and Ports of the Sea, as upon the high Sea. Yet if this be doubted, what fol-

* Or rather addition to the manner of trial ; for the other manner of trial is not taken away by this.

loweth in the Act will make it more plain, *viz.* That all Treasons, Felonies, Robberies, Murders, and Confederacies hereafter to be committed in or upon the Sea, or in any other Haven, River, Creek, or place where the Admirals have, or pretend to have Power, Authority or Jurisdiction shall be enquired, tryed, &c.

So that we see here the same criminal offences acknowledged to have heretofore been triable by the Civil Law, and that it is now enacted, that hereafter the same offences committed upon the Sea may be otherwise enquired, tried, &c. And lest any doubt should arise, how far the Sea heretofore extended, therefore it is added, "or any other Haven, River, or Place, where the Admiral or Admirals have or pretend to have Power, Authority, or Jurisdiction."

Again, had these Havens, Rivers, and Creeks ever been within the bodies of Counties, so that a Jury might have been had out of a proper County for the Trial of these offences thereon committed, then needed not this Statute have appointed any such trial thereof by Jury, to be chosen out of any County limited by the King's Commission proper or not proper. Nor assuredly would this Statute have given the cognizance of these offences committed within the bodies of Counties to the Lord Admiral and his Deputies.

Now if these Havens, Rivers, and Creeks were so far out of the bodies of Counties, that a Jury could not, nor yet can be had out of a proper County, but must be had out of any County by the King in Chancery appointed for the trial of these criminal causes arising from these offences thereon

thereon committed, I conceive it will seem strange that it should be affirmed that the same Havens, Rivers, and Creeks should be so far within the bodies of Counties, that a Jury might, or may be had out of proper County, for the trial of such Civil causes as might or may arise from Civil matters thereon had or done ; so that I cannot by the uttermost of my endeavour find out the foundation either of law or reason, whereon this Judgment was built. Sir *Edward Coke* not seldom termeth it a Maxim in the Common Law, *Quod nemo debet videri prudentior lege*, that no man ought to seem wiser than the Law : and truly from this Maxim (as he termeth it) I conceive, as strong a conclusion may be drawn, viz. *Quod hisce statutis nulli prudentiores videri deberent*, none ought to have seemed wiser than these Statutes themselves. But indeed as this Judgment hath been by some accepted as grounded upon law, so hath it been by more, and those learned in the Law, refused and rejected as not grounded thereon, as I shall hereafter shew by Writs *de Procedendo*, awarded out of the Chancery upon Injunctions thence granted, and Consultations both out of the King's Bench and Common-pleas, upon Prohibitions thence granted upon causes of the self same nature.

Now I hope by what hath been said, and shall hereafter be shewed, it plainly will appear that this first and leading Judgment was not so grounded either upon law or reason, or upon so sound a foundation, as that men in succeeding ages should build their judgments thereupon, nor so complete or fit a guide or rule as that Lawgivers should be directed thereby (although it had been *contemporanea statutorum expositio*, made within twenty years of the making of one of the said Statutes, and that

that upon two years advisement and deliberation, as Sir *Edward Coke* affirmeth) which Induction or minor Proposition, is as infirm as the major, and both will leave the conclusion to stand alone without legs, which must necessarily fall to the ground. First then, that this was *contemporanea expositio*, made within the space of twenty years next after the making of one of these Statutes will not be made good; for the last of those Statutes is that of 2 *H. 4. cap. 11.* which was *anno 1400*, and the Judgment was given the 6 *H. 6. Hil.* which was *anno 1427*; and how this can be brought within the compass of twenty years, which appears so plainly to be seven years without that compass, I know not. Besides, this Statute is only in confirmation of that Statute 13 *Ric. 2. 5.* setting a penalty of double damage unto the party grieved, and ten pounds to the King, upon him that shall offend against this Statute of the 13th of *Richard the Second*. Now it is true this Judgment doth pursue this Statute in giving double damages to the Plaintiff, and the penalty of ten pounds to the King against the Defendant: But the giving of these double damages and penalty is grounded upon the breach of the former Statute, unto which only this hath relation; and this Statute neither needed, nor had it any exposition at all: But the Judgment was grounded upon an Exposition made of the former Statute 13 *Ric. 2.* upon which (if the Statute would have born any such construction) the Party suing in the Admiralty contrary to that Statute in a cause of the same nature, would have before the making of the Statute of the 2d of *H. 4.* been liable to the single damages though not to the double; but the Law whereon this Exposition was made to ground this Judgment, ought to have been some Law that declareth

declareth a Haven to be within the body of a County, and without the Jurisdiction of the Admiralty, and must needs have been before the making of this Statute, if there had been any such at all, which I believe can never be found or shewed: For sure I am (as I said before) there is not one word in the Statute it self, which can so much as seem to draw any man to imagine that a Haven or Port should be within the body of a County; but however it is the exposition of this Statute (though groundless) upon which the Judgment is founded, and this Statute was made eleven years before the other; and then will this *contemporanea expositio*, said to be within twenty years, scarce fall to be within twice twenty years: For the Statute made in the 13th year of *Richard* the second was made in *anno* 1389, and the judgment was given in *anno* 1427, which is full 38 years; and ought not to have had an exposition put upon it, clean destructive to another Statute made within two years after, and in the same King's Reign, which cleareth the Admirals Jurisdiction to be over the Havens and Rivers beneath the first bridges nearest to the sea, even of the death of a man, &c. which is *magis contemporanea et multo stabiliior expositio*, being made upon as good advisement as this, though perhaps not upon terms of deliberation, which consideration I come to consider next: And I cannot conceive the advisement upon two years deliberation upon one particular point, should render the determination thereof ever the more sound, but rather sheweth a great deal of doubting and fearfulness to determine. But it seems after two years deliberation, they determined to have the Ports and Havens (without any warrant of Law that Sir *Edward Coke* hath declared, or that I can by any means find

find) to be within the bodies of Counties. And truly I think the time was short enough, and their pains great enough in that space to turn so much sea, or water appertaining unto the sea into land, or into the heart of a County: But if the foundation of this Judgment be infirm, surely it will not support it, being so weighty a Judgment as it is, but that the same must fall to the ground and be buried in the earth, or drowned in the depth of that Sea it would have dismembred of its Ports, Creeks, and Havens, unless whatsoever a Court shall once adjudge through misapprehension, or any manner of misunderstanding, must ever after be observed for law; which whosoever affirmeth must maintain some men to be infallible, or else that one injustice may be a warrant for another: But if to persist in an error be another and a greater error, then surely to square justice by so crooked and untried a rule, can produce no strait or upright future judgment. I must confess the judgments of such grave and learned men, in such a place and authority ought much to sway with their successors in doubtful cases, and one judgment ought as little as may be to thwart and cross another, but not unless the same be agreeable unto justice, equity, right, reason, and binding laws, constituted, appointed and published by superiour powers, which are always to be observed.

CHAP.

C H A P. VI.

That from the two other Actions instanced in, to be brought against the parties suing in the Admiralty Court for a business done upon the Ports, no concludent Argument is deduced.

TWO Actions likewise are instanced instituted in the Court of the Common-pleas to the same purpose, which can be deduced from no better reason, nor founded upon any sounder ground than this first Judgment was, more than that they had this for their example. (*At exempla mala sunt reprobanda, et non a sequenda*) both of them *Pasch. 12 H. 6.* The one is an Action brought by *Robert Cupper*, upon the beforementioned Statutes in the Court of Common-pleas, against *John Raymer* of *Norwich*; for that the said *Raymer* did sue the said *Cupper* in the Court of Admiralty, for that he the said *Raymer* having a Ship *in portu aquæ Jernemuthæ infra corpus com. Norf.* ready for a Voyage to *Zeland*, the said *Cupper* entred the said Ship lying in the said Haven, and took away divers goods out of the same, *asserendo per prædictum placitum res illas super altum mare emerfisse, ac si res illæ super altum mare emerfissent, cum non ibi, sed apud Jernemutham contra formam Statutorum prædict.*

The other was an Action between *John Wyde-well* and the said *John Raymer*, the same Term in the same Court; but whether there were any Judgment upon these two Actions or not, or what the Judgments were is not set forth: The Judg-

^a L. 1. ad Senat. c. Maced.

ments might be given for the Defendants, as well as against them, for ought appears out of what Sir *Ed. Coke* hath set down; and since he hath spared the pains to set them down, I shall spare my labour for looking them out: If any Judgment were given upon either, which I the rather conceive there were not; for that if there had been any, Sir *Edward Coke* would not have spared to have told of them, if they had been for his purpose. If the Judgments were given agreeable to the former Judgment, and passed by that example, yet is there no better ground for the same, made to appear for founding them upon than for the former, which is but a quakemire.

C H A P. VII.

The Argument deduced from two Premunires instanced in to be brought against the parties suing in the Admiralty for things done upon Ports, redargued.

BUT to keep some method, I must, out of these things which Sir *Edward Coke* hath promiscuously urged against the Admirals cognizance of Business done upon the Ports and Havens, and of Contracts made upon the land for freight, Mariners wages, tackle, furniture, and ammunition: and of things done beyond the seas, &c. in the next place pick and gather the rest of those things which only concern his cognizance of businesses done upon the Ports and Havens, and give some answer to them first; and those are Premunires, Prohibitions, Book-cases, and Au-

thorities in Law : and then come in the third book of this Treatise, to those things which he hath urged against the Admiral's cognizance of or concerning Contracts made upon the land for freight, Mariners wages, &c.

Two Præmunires he instanceth in, the one brought *Mich. 38 H. 6.* by *John Cassy* Esquire against *Richard Beauchampe*, *Thomas Pounce* Esquires, and others, upon the Statute of *16 Rich. 2. cap. 5.* for suing in *Curiâ Romanâ vel alibi* of matters belonging to the Common Law, for that the Defendants did sue the Plaintiff in the Admiralty Court before *Henry Duke of Excester*, that the said *John Cassy* did take and carry away certain Jewels *super altum mare, ubi idem Johannes Cassy bona illa apud Stratford Bow infra corpus comitatûs Middlesexiæ, et non super altum mare cepit*, which (saith he) is so evident, and of so dangerous consequence, as no application shall be made thereof; but I must (under favour) take leave to make some application, and some answer likewise hereunto, and shew that the urging both of this, and the other which he instanceth in, which is a Præmunire brought *9 H. 7.* for a Suit in the Admiralty Court before *John Earl of Oxford*, for taking and carrying away *quandam naviculam apud Horton Key at South-Lyn, &c.* supposing the same to be *super altum mare*, where it was *infra corpus comitatûs*, is no way consequent or concludent to prove the Ports and Havens to be within the bodies of Counties.

For the first of these, it is plainly affirmed that *John Cassy* did take away the goods he was sued for in the Admiralty Court at *Stratford Bow*, being a Town or Parish plainly within the body of the County of *Middlesex*, and no Haven or Haven Town. This Suggestion being proved, the Admiral

miral had no colour at all to take cognizance of this cause.

For the taking and carrying away of the little Ship, little Bark or Boat (for *navicula* signifieth either of the three) at *Horton Key* at *South-Lynne*, it concludeth nothing against the Admiral's Jurisdiction upon the Haven or Port, taken for the water beneath the first Bridge: for a Key is often taken for the Wharf, or place wherein goods are usually landed; but strictly it is taken for the very separation of the land from the water, by wood or stone, or both in such places as goods are usually landed at; and these are the keys that lock those doors that Sir *Edward Coke* would have stand wide open, placed by God himself to no purpose so far within the Seas. Now at *Horton Key* may be as well on the dry side of the Key, as on the wet; as well upon the land as upon the water: and little Ships, little Barks, or Boats are oftentimes drawn up at the Keys, where they arrive, to be caulked and repaired, and might be from thence taken and carried away perhaps from the water (their accustomed Element) to the fire, wherewith for the most part, when they escape drowning, they are at last consumed, when they are become unserviceable.

Again, these two Premunires are said only to have been brought, and nothing said of the event, or what was determined thereon; so that here is nothing but the opinion of those that brought them, and no resolution of the Judges; and so these two Premunires conclude nothing at all.

But grant two suppositions (neither to be granted nor supposed, unless proved) *viz.* that these two several Acts were done or committed upon Ports and Havens, and that the determination and resolution of the Judges was against the Defen-

dants; yet he that will but look, may see the two foundations whereon these determinations or resolutions were or should have been built, from whence this land Argument is raised, to have been laid upon the sea sands, too slippery a place for them to stand on; the one is that before-mentioned groundless supposition of the Ports and Havens being within the bodies of Counties; for which no proof is offered; but that some against all reason, and they know not wherefore, have taken them so to be. The other is the Statute upon which these Premunires were brought, which he affirmeth to be the Statute 16 *Rich. 2.* for suing in *Curiâ Romanâ vel alibi*, of matters belonging to the Common Law.

This Statute consisteth of a Petition made by the Commons unto the King, and the King's Answer thereunto, as all ancient Statutes of those days do. In the Petition is first set forth that the King and all his liege People ought of right, and of old time were wont to sue in the King's Court to recover their presentments to Churches, Prebends, and other Benefices of holy Church, to which they had right to present, &c. And when Judgment was given in the same Court upon such a Plea and Presentment, the Archbishops, Bishops, and other Spiritual persons, which had the Institutions unto such Benefices within their Jurisdiction, were bound and did make execution of such Judgments by the King's Commandments, of all the time aforesaid without interruption, &c.

And in the next place they do complain, that of late divers Processes had then been made by the Bishop of *Rome*, and Censures of Excommunication upon certain Bishops of *England*, because they had made execution of such commandments to the
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open disherison of the Crown, &c. And further complaining that also it was said, and a common clamour was made, that the said Bishops of *Rome* had then ordained and purposed to translate some Prelates of the same Realm, some out of the Realm without the King's assent and knowledge, and some out of one Bishoprick into another, within the same Realm, without the King's assent and knowledge, and without the assent of the Prelates so to be translated, which Prelates were much profitable and necessary to the King and his Realm; by which the Statutes of the Realm would become defeated, &c. And nothing more is contained in the said Petition, but what concerneth the premisses. The King in his Answer doth ordain, That if any purchase or pursue, or cause to be purchased or pursued in the Court of *Rome*, or elsewhere, any such Translations, Processess, and Sentences of Excommunication, Bulls, Instruments, or any other thing whatsoever, which touch the King, against Him, his Crown and Regality, or his Realm, as is aforesaid: And they which bring within the Realm, or them receive, or make thereof notification, or any other execution whatsoever, within the same Realm or without, That they, their Notary, Procurators, Maintainers, Abettors, Fautors, and Counsellors, shall be put out of the King's Protection, and their Lands and Tenements, Goods and Chattels forfeited to our Lord the King, that they may be attached by their bodies, &c.

In these antient Statutes, which are by way of Petition and Answer, the Answer hath always relation to the Petition, and granteth what is therein desired; sometimes less, but never more: by this Petition nothing is desired but the restraint of the Pope's power, and assumed authority in those things

things therein express'd; nor is there any thing more in the Answer granted, if these words in the genuine sense thereof be duly examined, which can be no other than this. If any purchase, &c. in the Court of *Rome*, or elsewhere from the Pope, or any power or authority derived from him, viz. either in his Court at *Avignon*, which he sometimes held there, or any other Ecclesiastical Court under his Supremacy, whether beyond the Seas, or in the Realm of *England*: (For we well know that in those days the Pope did challenge a power over the Ecclesiastical Courts here as subjected unto him, as their supreme only, or at least as well as the King) and of these Courts and none other can this [*elsewhere*] be understood, as will plainly also appear, by the things specified in this answer, to be purchased and pursued, viz. If any purchase or pursue in the Court of *Rome*, or elsewhere, any such Translations, Processes, and Sentences of Excommunications, Bulls, &c. Now cannot these things, nor could they elsewhere, or in any other place besides the Court of *Rome*, be purchased or pursued, but from the Pope or his Authority in those other Courts before mentioned. Again, these words [*elsewhere*] were necessarily inserted, and necessarily to be understood of those Courts under the Pope's authority, from whom and whose authority those things were to be purchased and pursued: otherwise, whosoever had purchased any of them elsewhere, to wit, in any of these other Courts, under his authority, and not in the Court of *Rome*, had not been by this Statute liable to the punishment thereof. But some perhaps may say, I have here purposely waved the general words which close up the particular specified things forbidden to be purchased, or pursued, viz. Bulls, Instruments, or any other things whatsoever, which words

words perhaps may seem to have relation to [*elsewhere*] and be thought to be of so large an extent, that the Words [*else where*] must be stretched to all places whatsoever, beyond other Courts of the Popes, or under his authority: But indeed I intended it not. But as they are the last words, which close up the particulars specified, so I reserved them to the last place, wherein I shall disclose and clear that doubt.

When several particulars then of the same nature are closed up with a general, that general comprehendeth all other particulars of that nature, and nothing of a different and distinct quality. So here these general words [*or any other things whatsoever*] must be understood of any other thing whatsoever of the same nature with those Translations, Processes, &c.

And this is plain enough by the words themselves, if seriously observed, and rightly understood. For take them as they run, and they carry their limitation with them, which bindeth them close, and restraineth them unto what precedeth in the Petition.

And as the *Court of Rome* and *elsewhere*, have relation to the Pope, to the Popes Court at *Rome*, and unto his Courts elsewhere, so must these words [*Instruments, and other things whatsoever*] have reference and relation thereunto. And then take these words, as they answer the Petition, and they can bear no other sense than this, *viz.*

Whereupon our Lord the King by the assent aforesaid, and at the request of the said Commons, hath ordained and established, that if any purchase or pursue, or cause to be purchased or pursued in the Pope's Court of Rome, or any other of his Courts elsewhere, any such Translations, Processes, and Sentences of Excommunications, Bulls, Instruments, or

any other things whatsoever, which touch the King's protection, &c.

So that upon the matter Sir *Edward Coke* here doth but tell us how these parties were accused, against whom these *Præmunires* were brought ; for certainly this Statute in a right construction could not be applied against them for suing in the Admiralty Court. And his instancing herein plainly arraigneth the Judgment which he before used for an argument against the Admiral's Jurisdiction upon Ports and Havens, and indeed may sufficiently serve to shew how groundlessly a word in a Statute may be, and hath been wrested and catch'd at, to diminish and streighten the Jurisdiction of the Admiralty, and enlarge the already extraordinary large power of the Common Law. Nor are these Interpretations or Constructions in any wise contemporary with the Statutes (as Sir *Edward Coke* would have them) but taken up a long time after, and crept into their Law, as heresies do into Religion, by new constructions of Scripture : Neither indeed can either the Judgment, or any of these *Præmunires* instanced in be said to be contemporary with the said Statutes.

For further proof of this point, he instanceth in four or five Prohibitions unto the Court of Admiralty, for holding plea of Contracts made upon Ports or Havens, and beyond the Seas. But to these I shall give an answer hereafter, when the Contracts made at land concerning Maritime affairs shall come to be insisted upon.

C H A P.

C H A P. VIII.

The Book-Cases and Authorities brought to prove that the Admiral hath no Jurisdiction upon the Ports, Creeks, and Havens, answered.

Certain Book-Cases and Authorities (as Sir Edward Coke calleth them) are likewise urged for proof of this particular, of the Admiral's having no Jurisdiction upon the Ports and Havens.

1. Some Books are quoted, ^a nothing being exprefs'd what the Books say, nor any argument deduced out of them to conclude the point : I cannot therefore give an answer to an argument unframed, nor is it proper for me myself to raise an argument out of those books, and then myself to frame an answer thereunto. But I will conceive those Authorities he hath quoted at large, to make most for his purpose, and endeavour to answer unto them.

He saith *in tempore Ed. 1. tit. Avowry 192.*
^b a Replevin was brought for the taking of a Ship in the Coast of *Scarborough* in the Sea, and for carrying the same from thence into the County of *N. Mutford* the Plaintiff counteth of a taking on the Coast of *Scarborough*, which is neither Town nor Place out of which a Jury may be taken, for that the Coast is four miles long.

And also of a thing done in the Sea this Court hath no cognizance, for certain Judgment thereof is given for the Mariners. *Berry* chief Justice of the Common Pleas ; *The King willeth that the*

^a The Register ; but quoteth not what place. F. N. B. fol. 81. J. & 88. F.

^b Temp. E. 1. tit. *Avowry* 192.

Peace be as well kept on the Sea as on the Land; and we find that you are come hither by due process; and therefore ruled him to answer.

Out of which the Author observeth four things.

1. That it is called the Sea, which is not within any County, from whence a Jury may come.

2. That the Sea (being not within any County) is not within the Jurisdiction of the Court of Common Pleas, but belongs to the Admiral's Jurisdiction.

3. That when the Ship came within the River, then it is confessed to be within the County of *Northumberland*.

4. That when a taking is partly on the Sea, and partly in a River, the Common Law shall have Jurisdiction.

For the first Observation, which is, that that is called Sea, which is not in any County from whence a Jury may come; I may very well grant it, and he yet never the nearer the proof of that he aimeth at, *viz.* that a Port or Haven is within any County out of which a Jury may come, which is absolutely denied, the reason whereof, as^c before, so shall be hereafter shewed.

For his second observation, that the Sea not being in any County, is not within the Jurisdiction of the Court of Common Pleas, shall not be denied him; but I must crave leave to observe with him, That notwithstanding this Ship was taken upon the Seas, where there was neither Town nor Place from whence a Jury could be taken; yet *Berry* the Chief Justice took cognizance of this Cause, and caused *Mutford* to answer: And this might have served him for as good an Argument to have proved the Seas to be within the Juris-

^c Sup. cap. 5. hujus lib. 2.

diction of the Common Law, as any that he hath used to prove the Ports and Havens to be within the bodies of Counties, and out of the jurisdiction of the Admiralty.

For his third Observation, which is, that when the Ship came within the River, it is confess'd to be within the County of *Northumberland*: I conceive, if *Mutford* might at the Common Law have pleaded two Pleas, which in many cases is necessary, and allowable by the Civil Law, he would as well have denied, that ever he carried the Ship into the County of *Northumberland*, as he did aver that he took her upon the Seas: and silence is not a consent, or confession, where a man is tied to one plea, and hath divers to plead: This therefore is neither confessed by *Mutford*, or any else, but by the Author himself, and such as are of his party: for *Berry* neither affirmeth nor determineth any such thing, or causeth him to answer upon any such ground, but upon this ground, that the King willeth the peace to be kept as well on the sea as on the land: And indeed the grounds are both kept alike to sound the cognizance of this Cause in the Court of Common Pleas, whereas the King, that willeth the peace to be kept as well on the seas as on the land, hath provided, instituted and appointed from antient, and far past times, distinct Judges, Justices and Officers for the keeping thereof on the one hand, and on the other: The Admiral, his Deputies, and other Justices with him appointed for the keeping thereof upon the Seas; and the Judges of the Land, and other Justices with them appointed for the keeping thereof upon the Land; and neither have to do with the others Jurisdictions: So that I cannot conceive, nor can I grant Chief Justice *Berry's* ground, whereon

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whereon he founded this Replevin, and the taking this Cause into cognizance to be *Terra firma*. And as for that which Sir *Edward Coke* would have to be the ground of this Replevin, and cognition of this Cause, namely because, after she was taken at Sea, she was carried into a Port or Haven, which he accounteth to be within the body of a County : If this should be allowed for a good ground, then must all Reprizals taken at Sea by Letters of Marque, and brought into the Port and Haven, be exempted from their condemnation in the Admiralty Court for lawful prize, and may be set free by a Replevin granted from the Common Law ; and whatsoever fact done upon the Seas, either by ship or man, the ship or man repairing to Port or Haven, Justice must be had against them from the Common Law : So that by this construction, the Admiral shall have no cognizance of piracy, robberies, &c. committed at Sea, either by the course of the Civil Law, or by the course of the Law of the Land upon the before mentioned Statute of *Hen. 8.* but if the Pyrats, or Robbers, &c. shall escape, and bring that which they have stolen, or by violence taken away, &c. into any Port, or Haven or to land, this piracy, robbery, &c. shall be tried at the Common Law. And as well may it be said that if they shall be taken upon the Sea, and afterwards be brought into any Port, or Haven, or to land, that then the Admiral's Jurisdiction ceaseth, and the trial belongs to the Common Law : So that the Admiral must go set up his Tribunal upon the high Seas (as Sir *Ed. Coke* distinguisheth them) if he will have any Jurisdiction at all. And whatsoever Injury shall happen to be done at Sea by one Ship unto another, the Ship which did the Injury, by repairing to her Port or Haven,

Haven, shall free herself from the judgment of the Admiralty Court, &c. and the Common Law shall free the Judge of the Admiralty, and all the Officers belonging to that Court from any further attendance there, which doubtless was the aim of the Author, as will plainly appear, when I shall come to sum up all he would have : And I wish it be not the aim of a great many still, whose aim for their own ends must necessarily be destructive to a general good, as shall be likewise hereafter shewn.

For the Fourth Observation, which is that when a taking is partly on the Seas, and partly in a River, the Common Law shall have the jurisdiction.

For this partly taking on the Sea, and partly on the River, I must confess I know not how it can be : for a Ship is either taken or not taken, when she is taken at Sea ; or taken or not taken, when she is taken upon the River, unless we can say that one part of the Ship was upon the Sea, and the other part of her upon the River, at the very instant time of her taking. But if the jurisdiction of the Admiralty may have its right, we shall have no need of a Mathematician to strike a line between the Sea and the River, to make the distinction ; for indeed this distinction will be altogether needless.

But this Observation having relation to the matter of fact from whence it is drawn, this meaning of taking partly on the Sea, and partly on the River, must be that a Ship is so taken, when she is first taken at Sea, and then brought into some Port or Harbour, which I shall leave to the judgment of the world, whether this Ship was taken on the Sea, or on the River, or can be said to be taken partly on the Sea, and partly on the River.

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And if this shall be determined to be a taking partly upon the Sea, and partly upon the River; and that therefore the Common Law shall take cognizance thereof, I must say (as I said before) the Common Law hereby shall take the whole Jurisdiction of the Admiral to itself. For what ship can be taken at sea, or to what end shall any ship be taken at Sea, if she shall not be brought into some Port or Haven, that she and her goods may be there disposed of? And indeed all Ships that be there taken by Letters of Marque, must be brought into Port or Haven before they break bulk: And the Common Law shall hereby cast off all Rules, and Laws of the Sea, whereby causes of that nature have been always (such interruptions excepted) discussed, tried, and determined between us and foreign Nations, and between our own Merchants, and seafaring men, and try, and determine them without either Rule or Law: For I could never yet find that the Common Law ever afforded either Books, or Precedents to guide or direct them in the adjudging and determining of causes of that nature, which is a thing most requisite and necessary, the Foreigner (between whom and us such cases for the most part happen) expecting to have his ship and goods confiscated and condemned, or quit, and restored upon the same terms, and according to the same Proceedings, Rules and Laws, as ours are in foreign parts, which the Common Law affordeth not, being only a municipal Law for the guiding and governing of the Subjects of this Nation in their land affairs at home.

Again, I would gladly know how this Observation agreeth with *Lacy's Case*, where one was stricken on the Seas, and died on the Land, the Common Law could not try this murder; and Ser-

Serjeant *Callis* in his reading at *Gray's Inn*, Anno 1622. in *prima Lectura*, p. 19. ^d giveth this reason thereof, because that trial was to be by a Jury which must come out of a proper County, which could not in this case, because the Sea was not within any County. In this case the party received a mortal wound at Sea, and was brought unto Land, and there died; in the other case, the ship was taken at Sea, but brought into a Haven, and there unladen; here the party may more properly be said to be partly killed at Sea, and partly killed at Land, then the ship can be said to be partly taken at Sea, and partly taken at Land, and yet the Land shall not find a Jury for trial of one, but the Sea-port shall find a Jury for the trial of the other, which I shall leave to be observed upon this his fourth observation, how far the same will hold water.

Next he urgeth that 8 *Ed. 2. tit. Coron. 399.* it is no part of the Sea where one may see what is done on one part of the water, and of the other; as to see from one Land to another: And that the Coroner shall exercise his Office in this case, and that of this the Country may have knowledge, whereby it appears (saith he) that things done there are triable by the Country (that is to say by Jury) and consequently not by the Admiralty Court.

And after in another place of the same chapter he urgeth *Stamford, l. 1. part. Coron. fol. 51. 6.* ^e to this very purpose: the reducing which together can be no wrong to his Argument, but rather a strengthening; for *vis unita fortior*, and so undertake the answering of both together.

^d Serj. *Callis* in 1 *Lect. apud hosp. Grai. An. 1622.*
Pl. coron. li. 1. fol. 51. 6.

^e *Stam.*

And this is that (which he saith) *Stamford* saith : If one be slain upon an arm of the Sea, where a man may see the land of one part and of the other, the Coroner shall inquire of this, and not the Admiral, because the Country may take cognizance, and doth vouch the said authority of 8 *Ed. 2.* whereupon he concludeth in these words : So this proveth that by the Common Law before the Statute of 2 *H. 4.* the Admiral had no Jurisdiction but upon the high Sea ; which only authority (saith Sir *Edward Coke*) is sufficient to over-rule all the said questions ; for (saith he) hereby it appeareth, that the Jurisdiction of the Admiral is only confined by the Common Law to the high Sea, and agreeth with all the Book-cases and Acts of Parliament.

For the first 8 *Ed. 2.* which saith that it is no part of the Sea where one may see what is done on one part of the water, and on the other ; that is indeed to be on the one side of the River, and see and discern what is done on the other ; and that must be so to see and discern, that he may perfectly judge of the action ; yea, and certainly of the party acting too, else can this seeing be to no purpose. And hereby it may appear that the Admiral had in those times Jurisdiction upon all ebbing and flowing Rivers, so far as they continued of such breadth, that one standing on the one side of the River could not see nor discern what was done, and by whom on the other side : So that his Jurisdiction in some places extendeth far above the first Bridges ; for what man is so quick-sighted, that standing on the one side of the *Thames*, above the Bridge, can so discern as to judge of the actions of men on the other ; and who, and what manner of men they are ? For to see, and not so exactly and judiciously discern in
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the adjudging of such actions, is as much as not to have seen at all.

But this being too ambiguous and uncertain a distinction between the Sea Jurisdiction and the Land, by reason of the different breadths in one and the same River, and the different apprehension of things by several mens eyes, and difference of the air at several times, being sometimes thick and cloudy, sometimes serene and clear; the next Bridges unto the Seas have been always held the most certain distinction between them. But indeed this Record is stretched further, and indeed so far that it is impossible it should hold; for by Sir *Ed. Coke* it is thus set down: "It is no part of the Sea where one may see what is done on one part of the water, and of the other (as to see from one land to the other)". As if there was no difference between seeing what is done on the one part and the other, and seeing from one land to the other. Here to make sure work with the Ports and Havens, and to bring them within the compass of the Coroner's Office, he will bring the main Sea, his *altum mare*, likewise within the compass thereof: For he that will make that to be no part of the Sea where one may see from one land to the other, must needs make *France* and *England* to be one Continent, which I see he spareth not to do, against the opinion of the world; for sure I am, a man may see from *Dover* to *Callis*, and yet all men have accounted *Callis* beyond the seas from *Dover*, and *Dover* beyond the seas from *Callis*. And yet for all this, if it were possible with modesty to grant him so much, yet can I not grant, that, because the Coroner might exercise his Office in this case, therefore the Admiral cannot exercise his; for it is but *argumentum ex contingenti, non ex necessario*.

Now for that which he hath out of *Stamford* ^f to the same purpose, but useth in another place of the same chapter to make his arguments seem the more in number. *Stamford* is not so confident of the truth of this assertion as he is, and puts it not as his opinion agreeing with the Record, but by way of a *quære*, seeking only what may be inferred from that Record.

He in that place sets down the diversity of opinions of their Books, concerning the extent of the Coroner's Office; and saith that *Nedham* saith, *Que Coroner ne poit inquierer das cun felony fors que de mort d'homme*: That the Coroner cannot enquire of any felony but of the death of a man, and yet he saith, *que in Northumberland* ^ε *ils inquieroient de tous felonies mes cel authoritie ils maintiennent per præscription, &c.* That in *Northumberland* they enquire of all Felonies, but this authority they maintain by prescription; and he saith, that ^h *tit. coron. in Fitz H. p. 206. present fust devant le Coroner que un tiel prise pur felony conduet fuit ad Esglise per certain freres, et adjudge vois presentment, eo que il ne parent inquierer de ceo ratione officii, etc.* It was presented before the Coroner, that such a one taken for felony was conveyed to the Church of certain Fryers, and it was adjudged a void Presentment, because he could not enquire thereof by virtue of his Office. *&c.* then he quoteth *Britton* ⁱ fol. 3. on the contrary, who saith *Que il parent inquierer de rape de femme et de debruser de prison queux sont autor felonies que nest mort d'homme, etc.* That he may enquire of the ravishment of a woman, and of breaking of

^f *Stam. pl. coron. li. 1. fol. 51. 6.* ^ε *Idem, ibid.* ^h *Fitz-Herb. pl. 206.* ⁱ *Britt. fol. 6.*

prisons,

prisons, which are other felonies, which are not of the death of a man. Then followeth that which is here urged after this uncertainty of the Coroner's power thus set down: *Ideo quære, &c. si un soit occise on rees in les bracher on sauses del meere où l'homme peut veier terre d'un part et d'autor, le Coroner. inquirat de ceo et nemy Admiral eo qui le pais rent been de ceo aver conusance; Quod vide titulo prædicto* ^k p. 399. *Issint ceo prova que per Comon ley devant le Statut An. 2 H. 4. c. 11. l'Admiral naver Jurisdiction se non sur le haut meere*, wherein he misquoteth the said Statute, and doth not rightly urge the words thereof, there being no such word as *haut* either in that Statute or in the Statute of 13 Ricb. 2. of which the latter is only a confirmation with a penalty, the words being only *sur le meere*, and not *sur le haut meere*; and from this misciting he raiseth a doubt which otherwise would have been none, *Ideo quære*, therefore seek or be advised, whether or not, if one be slain upon any arm of the Sea, where a man may see the Land on one part and on the other, the Coroner shall enquire thereof and not the Admiral; because, or for that the Country may take cognizance of it, which (saith he) see in the said title p. 399. So (saith Sir Edward Coke) this that is deduced and drawn from this authority, doth prove that by the Common Law before this Statute of 2 H. 4. c. 11. the Admiral had no Jurisdiction but upon the high sea, whereas *Stamford's Quære* resteth still upon this point; and he declareth not his own opinion therein, but leaveth this as doubtful still, as he did the extent of the Coroner's Office concerning Felonies before, which

^k Stam. tit. præd. p. 399.

he might very well do, this being raised upon so mistaken a ground, which if it had been rightly cited, he might have easily determined against Mr. *Coroner*, and have left no doubt behind him.

Now we may see plainly by what Sir *Edward Coke* saith in the first place, where he voucheth this Record, that the Record (as I said before) is very far stretched, and part which is from thence deduced and drawn very far fetched, to make seeing what is done on one part of the water and of the other, to be seeing from one Land to the other ; this by no Logical Rule can be allowed ; the other may, That is, a seeing from Land to Land, with the limitation before mentioned, *viz.* so to see as perfectly to discern what is done on the other part of the water. Take this seeing then with that limitation, without which it is as good as no seeing (for a man to see, and not discern what he seeth to guide and direct his Judgment, helpeth that man nothing in his knowledge of what he is about to judge by his seeing) as I have said before. For doubtless the foundation of this opinion, if it can be founded upon any reason (which all opinions are pretended to be) must be, that the witnesses being on Land on one side of the River may before the *Coroner* give their testimonies to the Jury of and concerning a fact, which they saw and discerned to be done, and how and in what manner the same was done on the other side, and so *ex consequenti* of a fact done, and how and in what manner the same was done upon the same River, in what part thereof soever, even in the extreme part thereof towards the other side to the very bank ; for that a quarrel, &c. might, or may be begun on one side, or
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in the midst, or on any other part thereof, and be determined by the death of one or more, on the extreme part thereof toward the other side, that there may be some colour to fetch a fact done upon such a River within Mr. Coroner's cognizance, and the rather because the witnesses upon the shore might happily be landmen, which by his authority might be called to give their testimony in such a case: Whereas in case the like fact should happen to be committed in a Ship, or other Vessel upon the Port or Haven, where the witnesses present at such fact, and might see and discern the same, for the most part were seamen, which had recourse usually to other Ships and Vessels, as well as the same where the fact was done and committed, and were and might be without the reach of his power and authority, or any other except the Admirals, who (if they were in any Ship or Vessel at an Anchor, either on the Sea, or on the Haven or Port) by his authority might call them, and have their testimony; or if gone in any voyage to any foreign parts, might by Commission have them examined *sub mutuo vicissitudinis obtentu*, and receive their testimony. Now this *seeing* being rightly thus understood, the Lord High Admiral of *England* will not so soon, nor so easily be thrust out of his Jurisdiction upon the Ports and Havens of the Sea, by the Coroner of a County, or by the Common Law either, as Sir *Edward Coke* by that which is deduced and drawn from this authority would have him.

Yet (saith Sir *Edward Coke*) this only Authority is sufficient to over-rule all the said questions: For (saith he) hereby it appeareth that the Jurisdiction of the Admiral is only confined by the Common Law to the high Sea, and affirmeth that it agreeth with all his former Book-cases, and Acts

of Parliament. For the Book-cases I cannot deny but that they are much alike, but all of them together not sufficient to make a sufficient proof for that which he would have, and against that which is denied him. For its agreeing with the Acts of Parliament, I wonder he should aver it, seeing this very point, even in this particular concerning the death of a man upon the Ports and Havens, is so clean contrary to what the Statute of 15 R. 2. c. 3.¹ in exprefs words saith ; *De mort de homme et de mabeym fitz en grosses niefs esteantz ethoverantz en my le haut fil de grosses Rivers, tant solement peravale lez pontz de mesme les Rivers, pluis procheyns al meer et en nul autre lieu de mesme les Rivers est l' Admiral cognissance* ; of the death of a man, and of maim done in great Ships, being and hovering in the main stream of great Rivers, only beneath the Bridges of the same Rivers nigh to the Sea, and in no other places of the same Rivers the Admiral shall have cognizance, which is a thing needed not, nor would have been provided for by this Statute, if a Jury could have been had out of a proper County for the trial thereof, which is a thing requisite by the Common Law, as in *Lacye's Case* ^m twice already cited upon other occasions ; and as by Serjeant *Callis's* reading likewise in the same places. So then for this particular concerning the death of a man upon a Port or Haven, (which is the foundation of this Argument, that the Admiral should have no Jurisdiction upon the Ports and Havens) it resteth only in question whether the Statute shall over-rule Sir *Edward Coke*, or Sir *Edward Coke* the Statute, and ancient Law and Practice of the Admiralty.

¹ Stat. 15 R. 2. c. 3. ^m Supra cap. eod. May. 1. 58.

This next thing he urgeth against the Admirals having Jurisdiction upon the Ports and Havens, is 43 *Ed.* 3. ⁿ which (saith he) the Lord *Dyer* ^o voucheth in *Mich.* 15. and 16 *Eliz.* (saying *quod vidi.*) The Case is that the Abbot of *Ramsay* was seised of the Manor of *Brancafter* in *Norfolk*, bordering upon the Sea, but more especially upon sixty acres of Marsh of the said Manor upon which the Sea did flow and reflow, and yet it was adjudged parcel of the Abbots Manor, and by consequence within the body of the County unto the low-water mark.

This argument cannot so much as seem to carry him so far as he would have gone before; for hereby he pretendeth the body of the County to reach only unto the low-water mark, and that only by consequence, which consequence will not hold; For as ^p Serjeant *Callis* in his *Gray's-Inn* Reading saith, p. 26. in Sir *Henry Constable's* Case, the Citizens of *Bristol* claimed Flotzon (goods floating on the Sea) by custom, and in ^q *Bracton* cap. 12. one alledged to be discharged of Toll or Custom on the Seas by prescription; in the Case of the Swans, in ^r Sir *Edward Coke's* 7th Report, one prescribed to have a game of wild Swans at *Abbots-bury* in a Creek of the Sea, which is a member or arm thereof. And in Sir *Henry Constable's* Case it is taken and received for Law, that a Subject's Manor may extend to the low-water mark by prescription; yet is not the Admiral's Jurisdiction at all hereby taken away upon the same places: For Sir *Edward Coke* himself in the same case declareth, that the Judgments of the Common Law have been both for the Ad-

ⁿ 43 *Ed.* 3. ^o *Dyer* term *Mich.* 15, 16 *El.* ^p *Callis* lect. in *Hosp. Graii*, p. 26. ubi citat casum dom. *Henry Constable.* ^q *Bract.* c. 12. ^r 7 *Coke Rep.*

miral's Jurisdiction and the Jurisdiction of the Common Law, both upon one and the same place at several times: For saith he, *Fuit resolve per totam curiam que le soil sur que le mere flow et reflow, sc. inter le high-water mark, et le low-water mark poet estre parcel d'un mannor d'un subject* 16 El. ^a Dier. 326. 6. act. et issint fuit adjudge in Lacyes ^t Case, Trin. 25 El. in cest court en uncore fuit resolve, quant le mere flow, et ad plenitudinem maris le Admiral avara jurisdiction de chescun chose fait sur le ewe inter le high-water mark, et le low-water mark per le ordinarie et natural course del mare, it issint fuit adjudge in le dit case de Lacy que le felony fait sur le mere, ad plenitudinem maris inter le high-water mark et le low-water mark, per le ordinarie et natural course del mare le Admiral avara Jurisdiction et uncore quant le mere est reflow le terr. port apperteine al subject et chescun chose fait quant le terr. est reflow serra try al common ley car ceo donques est per cel del country, et infra corpus comitatus, et our ceo agree 8 Ed. 4. 19. ^u issint nota que South le low-water mark le Admiral ad le sole et absolute Jurisdiction et inter le high-water mark et low-water mark, le common ley, et le Admiraltie avoient divisum imperium interchangeablement come est avant dit, sc. lun super aquam et l'auter super terram.

It was resolved (saith he) by the whole Court, that the soil upon which the Sea doth ebb and flow, to wit, between the high-water mark and the low-water mark, may be parcel of a Manor of a Subject, 16 Eliz. Dyer 326. 6. acc. ^w and so it was adjudged in Lacyes ^x Case, Trin. the 25th

^a 16 El. Dyer. 326. 6. act.
25 El. ^u 8 Ed. 4. 19.

^x Casus Lacy, Trin. 25 El.

^t Casus Lacy, term Trin.
^w 16 El. Dyer. 326. 6. act.

of *Eliz.* in this Court, and so it was resolved when the Sea doth flow unto the full height, the Admiral shall have Jurisdiction of any thing whatsoever done upon the water, between the high-water mark and the low-water mark, by the ordinary and natural course of the Sea. And so it was adjudged in the same Case of *Lacy*, that a Felony done upon the Sea at full Sea, between the high-water mark and low-water mark, by ordinary and natural course of the Sea, that the Admiral shall have Jurisdiction: And so when the Sea returned, the ground may appertain to a Subject, and every thing done upon the ground when the water is returned shall be tried at Common Law, because it is then parcel of a County, and within the body of a County; and with this agreeth that of the 8th of *Ed. 4.* 19^y. So note, that beneath the low-water marks the Admiral hath the sole and absolute Jurisdiction; and between the high-water mark and the low-water mark the Common Law and the Admiralty shall have severally Power interchangeable as aforesaid, to wit, the one upon the Water and the other upon the Land; so it plainly appeareth by what himself hath declared, that though the Land, from the high-water mark to the low-water mark, may be said to be within the body of a County when the water is off it, yet is it within the Jurisdiction of the Admiralty when the water doth overflow it: And this will prove no argument at all why the Admiral should have no Jurisdiction upon the Ports and Havens, but rather an argument *à fortiori*, *vel à majori ad minus*, that he shall there have Jurisdiction. For if he shall not be excluded from his Jurisdiction in those places, where the water recedeth and leaveth dry land of use and profit, which may be claimed

by the Lord of a Manor as parcel of that Manor ; much less can he be excluded from his Jurisdiction in the Ports and Havens from whence the water doth never clearly recede, or where no man doth or can challenge any right of possession : And again shall he not be excluded those places in the exercise of his Jurisdiction, where seldom or never, and little or nothing falleth under his cognizance ? And shall he be excluded those places in exercise thereof, where things of the same nature, and by the same Law determinable of greater consequence, fall under his cognizance almost daily and hourly ? If so, we may very well suspect the reason and cause thereof, that it came so to be, not for any good intended either to the commonwealth or good people thereof, but for some private end ^z. To this he addeth, that it was adjudged *Paschæ 17 Eliz.* ^a in the Exchequer, *Diggs* being Plaintiff, that the land between the flowing and reflowing of the Sea, belonged to the Lord of the Manor adjoining, as the Lord *Dyer* doth there report, but to this I shall not need to strive to give any other answer than to the former. To that of 48 *Ed.* 3. and the 3. concerning the contract for Mariners wages, I shall give an answer when I shall come to handle the other contracts made at land. It is further objected that 46 *Ed.* 3. and 3 ^b *tit.* conusance 36. an account of trespass was brought for taking of a Ship in the Haven of *Hull* against certain persons : The Mayor and Bailiffs of *Hull* demanded cognizance by the Charter of the King granted unto them, that the Citizens and Burgeffes of *Hull* shall not be impleaded *alibi de aliquibus transgressionibus, conven-*

^z Sc. ampliare Jurisdictionem in quibus non est amplianda, &c. ^a Jud. scac. Pasc. 17 El. ^b 46 Ed. 3. 3. tit. tit. conusance, 36.

tionibus et contractibus infra Burgum, etc. quam infra Burgum: And the cognizance was granted, which proveth that the Haven of Hull where the Ship did ride, was *infra Burgum de Hull*, and by consequence *infra corpus comitatús*, and determinable by the Common Law, and not in the Admiralty Court. Which conclusion no Logician will allow *ex necessario* to be deduced out of the premises, *vix ex contingenti*; nor will any Law (as I conceive) allow it, that two contending at Law for that which belongeth to neither of them, though it shall be adjudged to one of them, that this shall in any wise be prejudicial to a third party that hath right thereunto, but that he may by the same Law recover the same.

Several Cities and Boroughs, especially upon the Sea coasts, do challenge several privileges, some by prescription, and some by grant, as is already set forth in this Chapter, as *Flotson at Bristol, &c.* and the Cinque Ports have their Admiralty Jurisdiction *ab antiquo*; yet doth not this make their Ports and Havens there to be part of their Towns, or make them to be within their Boroughs, but within the compass of their Privileges; nay, it rather sheweth the contrary. For things done upon their Ports, they have their Admiralty, and do, or ought to proceed according to the Rules of the Civil and Maritime Laws, *Talem habent Jurisdictionem ratione Portuum, non ratione alti maris*, and are to give Judgment according to the same Law, as the Vice-Admirals of several parts do, from which Judgments given in any Port-town, (except the Cinque Ports where the appeal lieth only to the Warden thereof) an appeal lieth to the high Court of Admiralty, as it doth from the Vice-Admiral's Court; and for other businesses done within their Town, they proceed according to the Common

Common Law, and they have their several distinct Officers for busineses of the one nature, and the other, as their Water-bailiffs for the one, and the Land-bailiffs or Serjeants for the other ; and if the Ports and Havens were not within the Jurisdiction of the Admiralty, I know no use that Cinque Ports, or any other Ports can have of an Admiralty by themselves (as absolutely and clearly the Cinque-Ports have) seeing that the Lord High Admiral of *England* hath that Jurisdiction of the main Seas, together with all Ports not so privileged. And it cannot be less necessary for all the other Ports to have all their busineses agitated therein, tried by the Civil and Maritime Laws, than it is for the Cinque Ports.

Hull, no doubt, hath great and large privileges ; but whether they extend unto things done upon the Port or Haven there, without the authority of the Admiral, I know not : It is like enough it may, which being made known, the cognizance of this cause might very well be dismiss'd from the cognizance of the Judges, and left unto the Major and Bailiffs of that Town. Howsoever take it that the cause was dismiss'd only upon that ground which is here set forth, *viz.* that the Citizens and Burgeses should not be impleaded *alibi in aliquibus transgressionibus, conventionibus et contractibus infra Burgum, &c. quàm infra Burgum* ; this, no doubt, was sufficient for the Judges of the Common Law to dismiss the cause from being proceeded in before them, before whom it was brought as an Action of Trespass, and not before the Admiral, &c. for that it rather belonged unto the Major of *Hull*, than to them, though indeed it perhaps belonged unto neither ; and hereupon the Major *de facto* might take cognizance, though by no law or right. I hope we shall not make the
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Judgment of every Major and Recorder to be a Law, or Precedent that others must be ruled by: For then we may hang up the Accessary, and go seek the Principal afterwards, as they did at *Grantham* in *Lincolnshire*, as I have heard. But Sir *Edward Coke* further saith, that the cognizance was granted, &c. I hope he meant not that it was adjudged to belong absolutely unto the Major and Bailiffs of *Hull*, excluding the interest of all other parties: for that had been to have judged the cause *inauditâ nec vocatâ parte interesse habente*. For the controversy was then whether the Judges of the Common Law, or the Major, &c. had the cognizance of that cause; and they having dismissed it from their cognizance, could grant it no otherwise to the Major and Bailiffs of *Hull*, but insomuch, or for that it belonged not unto their cognizance; so that after the dismissal this controversy was no longer between the Judges of the Common Law, and the Major of *Hull*: but now the difference concerning the Jurisdiction of, and over this cause, must rest between the Admiral and the Major and Bailiffs of *Hull*, for that the Admiral being no party *in judicio*, the cognizance could no otherwise be granted unto the Major and Bailiffs of *Hull*, than that they should have it for ought that Court, in which the Action of Trespasse was brought, had to do therewith, or to hold plea thereof, which could not bar the Admiral of his claim of Jurisdiction, who was no party in judgment: And then this only resteth as an Authority quoted, that such an Action was brought at the Common Law; and as it appeareth, that the same was never there determined; so doth it not appear that ever it was therefore determined by the Major and Bailiffs of *Hull*. But the Major and Bailiffs perceiving an Action to be brought
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at the Common Law for a trespass done upon their Ports, might very well conceive that the Action being there brought, the same was rather triable before them, by virtue of that clause in their Charter which was urged then by the Judges of the Common Law; and the cause being dismissed, as it appeareth not that the Major and Bailiffs determined it, no more doth it any ways appear, that they did yet by virtue of this Dismission, or Grant (as Sir *Edward Coke* termeth it) take upon them so much as the cognizance thereof; or if they did, that the Admiral ever had notice thereof. But if the Admiral did, or if he did not, yet if he had taken to his Court the cognizance of this cause, I am confident that the Major and Bailiffs could no ways by virtue of that clause, or upon any other ground have taken it out of his hand, unless they have Admiralty Jurisdiction granted unto them, as the Town of *Ipswich* hath; the substance of whose Patent concerning the same, I shall here set down in confirmation of what I have said before concerning the Admiralty Jurisdiction upon the Cinque-ports and other Ports.

Henricus Dei gratia, &c. octavus &c.

Cumque prædictus avus nobis per chartam suam prædictam, quam, ut præfertur, confirmavimus, concesserit Ballivis et Burgensibus Villæ prædictæ et successoribus suis inter alia, libertates, Franchises, privilegia, et immunitates, in eadem chartâ contenta et specificata, auctoritatem et potestatem faciendi et exequendi infra eandem villam Gypewici, ac libertatem et præcinctum ejusdem omnia et singula quæ Admirallo, seu ad officium Admiralli pertinent. Cumque portus villæ prædictæ et aqua currens et recurrens prout casus exigerit ab eodem portu per fluxum
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et refluxum maris versus le Southeast, ad quendam locum vocat. Polleshed, alias dict. Polished, nec non tota terra et solum quæ per hujusmodi fluxum et refluxum maris aliquo tempore aqua fuerit superundat. sive coopert. infra libertatem villæ prædictæ extiterint. Et quod iidem Ballivi, Burghenses et Communitas, et successores sui habeant et gaudeant eis, et successoribus suis omnia et singula libertates, Franchises, authoritates, privilegia, jurisdictiones et immunitates eis vel prædecessoribus suis aut eorum alicui seu aliquibus prædictum avum nostrum sive aliquem alium progenitorum nostrorum nuper regum Angliæ per chartas sive per chartam alicujus eorumdem progenitorum nostrorum, quas nos per litteras nostras prædictas de confirmatione acceptavimus, ratificavimus, et confirmavimus, contenta et specificata tam in dicta aqua, sive in cursu aquæ ac prædicta terra et solo per fluxum sive refluxum maris aqua quandoque superundat. sive coopert, quam in omnibus et singulis aliis locis quibuscunque infra villam, præcinctum, suburbi, libertates et Franchises. prædict. juxta formam chartarum et concessionum prædictarum, prout ea ante tempora usi fuerunt et gavis. Et ulterius nos de gratia nostra uberiori ad intentionem quod prædicti Ballivi, Burghenses et Communitas et successores sui securius et liberius absque ambiguitate, quæstione vel dubio habeant officium Admiralli nostri et hæredum nostrorum infra libertatem, præcinct. et Franchises. prædict. et omnia quæ ad officium Admiralli tam super mare et littus maris quàm alibi infra libertatem, Franchises. et præcinct. prædict. pertinent, concedimus nunc Ballivis et Burghensibus ac communitati villæ prædictæ et eorum successoribus per præsentem, quod Ballivi ejusdem villæ pro tempore existentes sint Admiralli nostri et hæredum nostrorum per et infra totam villam, præcinctum, suburbia, aquam

aquam et cursum aquæ ac dict. terram, et solum per fluxum et refluxum maris quandoque aqua superundat. vel coopert. seu in posterum superundand. vel cooperiend. Ac omnia et singula quæ ad officium Admiralli pertinent seu pertinere poterint tam super mare et littus maris quàm alibi infra libertatem, præcinctum, limites supra specificat. faciant et exequantur in tam amplis modo et forma prout aliquis Admirallus Angliæ in aliquo loco facere vel exequi consuevit et facere debuit quoquo modo, &c. Et insuper nos de gra. nostra ampliori ad relevamen et incrementum villæ prædictæ, quæ ut dicitur diversimode depauperata est ac in auxilium solutionis dictæ firmæ suæ sexaginta librarum nostr. et successoribus nostris annuatim ut præmittitur solvend. damus et concedimus per præsentem pro nobis et hæredibus nostris eisdem Ballivis, Burgensibus, et Communitati et successoribus suis wreckum maris, ac omnia bona et catalla quæ dicuntur Wreck, Flotson, et Getson; et omnia alia bona et catalla quæ Admirallo sive ad ejus officium pertinent seu pertinere debent, aut poterint infra dict. portum et aquam ac terram et solum prædict. per fluxum et refluxum maris, ac omnia bona per fluxum et refluxum maris aqua ut præfertur superundat. vel coopert. vel in posterum superundand. vel cooperiend. qualitercunque contingent. vel ibidem in mari, aut super littus maris invent. seu inveniend. et etiam omnia et singula bona et catalla felonum de se, nec non bona et catalla quæ dicuntur deodanda infra libertatem, Franches. et præcinctum villæ prædictæ, ac in et infra prædictum portum, cursum aquæ ac terram et solum prædict. per fluxum et refluxum maris aqua ut præfertur superundat. vel coopert. vel in posterum superundand. vel cooperiend. absque computo sive aliquo alio nobis vel hæredibus nostris pro præmissis vel aliquo præmissorum reddend. vel solvend. Sciatis insuper, &c. Teste meipso apud
Hampton

Hampton Court *tertio die Martii anno regni nostri decimo* per ipsum Regem de dat. prædictæ, autoritate Parliamenti.

Now I hope it plainly appeareth hereby that the Admiral hath full power and jurisdiction upon the Ports and Havens, if he be not excluded by special grant, (and that made in the vacancy or interval between one Admiral's Patent ceasing, and another's beginning.) And if the Port had been within the Borough of *Ipswich*, and things there done had been triable at their Town Court, or at the Common Law, then had they had no need of this Grant of Admiralty Jurisdiction, &c. by which Grant of Admiralty Jurisdiction unto them, it doth likewise as plainly appear, that whatsoever is done upon the Port or Haven, is of Admiralty cognizance. This Admiralty Jurisdiction of theirs extending only unto their Port and Haven, which reacheth only unto the place called *Pollishened, alias Poleshead*, and no further, which is the point of the high Sea, (as Sir *Edward Coke* termeth it) so that they have Admiralty Jurisdiction, and yet none upon the main Sea, but upon the Port and Haven only. But I shall proceed unto the next thing by Sir *Edward Coke* insisted upon.

And in the next place it is thus objected, that 7. R. 2. tit. *Trespafs* ^a in *Statkam*, pl. 54. in an Action of Trespafs for a Ship and certain Merchandises taken away (which trespafs must of necessity be alledged in some Town and County in some River or Haven) the Defendant pleaded that he did take them *in le baut mere one les Normans quex sont enemies de Roy*, and it is ruled a good plea, which concurreth with the other books.

^a 7 R. 2. tit. *trespafs* in *Statk.* pl. 54.

Here it is not said that this trespass was laid or alledged to be done in any Town or County in any River or Haven ; but saith he, it must of necessity be so. If he take Town, County, River and Haven *disjunctim*, then I think that according to the Law the Action of the Trespass must have been laid to have been done somewhere, or else the Action would have abated : but if he take them *conjunctim*, as that it must of necessity be laid to be done in some River or Haven, in some Town and County, I confess that, according to reason and nature, a Ship with her lading cannot be elsewhere, except it be upon the high Seas : But I know that at the Common Law it is usual *per fictionem impossibilitatis* (which neither the Civil Law nor Nature do allow) to lay and alledge in a Declaration that such a Ship with her Tackle, Furniture, Ammunition and Lading, was in the possession of the Plaintiffs *in parochia beatæ Mariæ de Bow in Warda de Cheap*, and there by him lost, and there *per inventionem* came to the hands and possession of the Defendant, &c. and why this Trespass of taking away this Ship and Merchandizes might not as well be laid to be done in some certain place within some certain Town far enough from the Port or Haven, I know not : And it is not said, that it was laid to be done upon a Port or Haven.

Wheresoever the trespass was laid to be done, in what Town of what County soever (for in some Town of some County, or in some part of some County it must be laid to be done) yet amongst all the Instances Sir *Edward Coke* hath brought, and amongst all that I could ever yet hear of, I never knew or heard of any original action brought at the Common Law, which was laid for a thing done upon any of the Ports or Havens, except that

that of *Hull* business, which never came to be adjudged between the Admiral and the Mayor, &c. of *Hull*, &c. or whether the action was rightly instituted or not. The defendant pleaded as above, and it was adjudged for a good plea. I would gladly know what could be argued from hence, if the truth had been otherwise, and he had pleaded he took the Ship and Goods *infra fluxum et refluxum maris*, or that he took them in *tali Portu one les Spaniards quex sont les enemies de Roy*, must necessarily this plea have been adjudged naught, because the other was adjudged good? I see not the consequence how this conclusion dependeth upon the premisses, if deduced into a Syllogism.

It is objected likewise that 7 *Hen.* 6. 32. ^b an action lieth at the Common Law for forestalling, &c. in a Port or Haven, &c. and by consequence the Admiral hath no Jurisdiction there.

Here I do observe, that about the 6 and 7 year of *Hen.* 6. the then Lord Chief Justice of the Common Pleas did much endeavour *suam ampliare jurisdictionem*; for about the same time the first judgment upon the Statute of the 2 of *Hen.* 4. for double damages was given for the pretended breach of the two former Statutes of the 13 and 15th of *Rich.* 2. and this 2 of *Hen.* 4. by suing in the Admiralty for a thing not done *super altum mare*, contrary to those three Statutes, whereas none of those three Statutes have one word in them that tendeth to the binding up the Admiral to the high Seas, unless any man can make *sur le mere super altum mare*; nor is there any word in them that tendeth to the making of the Ports and Havens to be *infra corpus comitatus*; ^c as I have shewed before. By this Judgment double damages were re-

^b 7 H. 6. 32.

^c Super c. 7. hujus 2. lib.

vered against him that had received a loss of 960 marks, odd monies ; and the damages were assessed by the Jury to 700*l.* which by the judgment being doubled, amounteth unto 1400*l.* so that instead of recovering of 900 marks without any trial, whether due to him or not, he is condemned in 1400*l.* How the then Plaintiff (as the Record is cited) having got the possession of the goods sued for by the Defendant, formerly the Plaintiff, or *pars agens* in the Admiralty, could sustain 700*l.* damage by being sued in the Admiralty, I know not, nor can imagine : For the Statute doth not say, the party sued in the Admiralty Court contrary to the Statute of the 13th of *Richard* the Second, shall recover double the value of what he there sued for ; but double the damage he sustained by such suit, which could be no great matter, unless he had recovered and obtained into his possession the sum sued for, which doth not appear, nor is it so much as alledged or affirmed.

Now it could not be expected that so much sea being converted into land by this judgment by two years labour, and but finished and brought to pass in the 6th year of *Henry* the Sixth, the same land should be in the very next year, *viz.* in the 7th year of the same King's reign re-converted into sea.

Yet is there a great deal more colour for an Action to lie at the Common Law for forestalling in a Port or Haven, than for the before mentioned Judgment ; but upon another ground than that which Sir *Edward Coke* would have to be the ground (namely because a Port or Haven is within the body of a County) which is this. Though the forestalling be an act done upon the Port or Haven, yet is it the forestalling of a Market, which

which is kept at land ; so that act done upon the Port or Haven hath relation unto the Market which is at land. And so the act done upon the Port or Haven may be said to arise from the Market which is at land, and within the body of a County, and that act upon the Port to be a forestalling of that Market which is at land : Just as a Contract made at land for transporting goods by sea, is an act done upon the land, but hath relation to a thing done at sea ; and so the Contract though made at land, is a thing that doth arise from a thing done or to be done at sea, and doth not arise from a thing either done or to be done at land within the body of any County : And therefore is this Contract triable in the Admiralty, and not at the Common Law : And this agreeth with the Statute of the fifteenth of *Richard* the Second,^d the Statute being truly examined, which I shall plainly shew when I come to speak of Contract. Yet may not this construction of the forestalling upon the water be allowed : for this is no Contract made for the performance of any act or thing at land positive, and therefore ariseth not from any act or thing to be done at land, but is a Contract which doth privately debar a further act to be done at land : And besides this is a compleat act, having reference to nothing more yet to be done ; but the bargain is made, the commodity bought, and all is done ; therefore is this forestalling triable in the Admiralty Court, and there punishable, as will hereafter appear by what I shall shew^e in several chapters of this second book.

In the next place it is objected, that the 19 *H.* 6. 7.^f it is said that the Statute doth restrain that the Admiral shall not hold plea of any thing rising

^d Stat. 15 R. 2. c. 3.

^e *Infra* cap.

^f 19 *H.* 6. 7.

within any of the Counties of this Nation, but Executions he may make upon the land ; this Statute which this Authority citeth, must be the same before mentioned Statute of 15 Ric. 2. ^g therefore I will say nothing to this here, more than that Sir *Edward Coke* doth hence infer, that though it be said in the 22 Aff. pl. 93. ^h that every water which flows and reflows is an arm of the Sea ; yet it followeth not (saith he) that the Admiral shall have Jurisdiction there, unless it be out of every County, or else such a place whereof the County cannot take knowledge, as it appeareth in the book of ⁱ E. 2. before cited.

But how this hath any reference to that of the Statute, to serve for his purpose, I know not. The last thing against that which is said 22 Aff. pl. 93. ^k he would prove by that of 8 Ed. 2. ^l before cited, which I have answered already.

It is argued out of *Fortescue*, cap. 32. fol. 38. ^m that the Admiral's Jurisdiction is confined to the high Sea ; for that he there saith, *Nam si quæ super altum mare extra corpus cujuslibet comitatus regni illius fiant, quæ postmodum in prohibito coram Admirallo Angliæ deducantur per testes, illa juxta legum Angliæ sanctiones terminari debent* : which (saith Sir *Edward Coke*) proveth by expresse words, that the Jurisdiction of the Admiral is confined to the high Sea, which is not within any County of the Realm.

If *Fortescue* had said much more than here he doth to have afforded him a better foundation for his Argument, than this which he hath said, doth ; I should not have much marvelled at it : For he

^g 15 R. 2. c. 3. ^h 22 aff. pl. 93. ⁱ Lib. E. 2. præci-
tat. ^k 22 Aff. pl. 93. ^l 8 Ed. 2. præciat. ^m Fortesc.
ca. 32. f. 38.

that conceived that if *Adam* had not sinned in Paradise, all the World had been governed by the Common Law, perhaps might in his time think it meritorious to reduce as much of the World as he could to the subjection of that Law: But truly out of what he saith here, Sir *Edward Coke's* conclusion is not Logically to be deduced: For to say, that because *Fortescue* saith that the Admiral hath Jurisdiction upon the high Sea, which is out of any County of the Kingdom, that he hath no Jurisdiction elsewhere, is no better an Argument, than to say that Sir *Edward Coke* was Lord of the Manor of *N.* and therefore he could have no land elsewhere: For *Fortescue* doth not speak this exclusive to any other part of the Admiral's Jurisdiction: Nor by saying *Quæ super altum mare extra corpus cujuslibet comitatus regni illius fiant*, doth he aver, *quod aliquis portus maris est infra corpus alicujus Comitatus*. If this Answer doth not satisfy, add the Answer to the next Objection to it.

The next Objection is deduced out of 2 *Rich.* 2. fol. 12. *p quod Hibernici sunt sub Admirallo Angliæ de re facta super altum mare*, which (saith he) agreeth with the former, viz. that the Jurisdiction of the Admiral is *super altum mare*.

And no doubt but it is; but it doth not therefore follow that it is no where else: Now this very authority sheweth the true use and ground of this distinction of *super altum mare*, and *super portum maris*, which is this: The Admiral of England hath Jurisdiction *super altum mare quoad Hibernicos, et Hibernici sunt sub Admirallo Angliæ de re facta super altum mare, et non super portum Hibernicum nisi per appellationem*. And so it is between

England and other Nations adjoining to the British Seas: For the Kings of *England* have *ab antiquo* had the dominion of those Seas as is sufficiently demonstrated and proved by that learned Gentleman Mr. *Selden* ⁹ by exceeding many Arguments throughout his whole Book *De dominio maris*, called *Mare clausum*, which I have touched upon before: But though the Kings of *England* had the dominion of those Seas, yet had those Nations Admirals who had the Jurisdiction of, and over all business done in and upon their own Ports, so that the Admiral of *England's* Jurisdiction *Respectu Regis Angliæ Dominii maris* is said to be *super altum mare quoad alias omnes nationes*. But as he had his Power from the King, so hath he Power, Authority, and Jurisdiction, as over the Sea, so over the Ports and Havens of the Sea, belonging to this Nation; as well as the Admirals of *France* and the Admirals of other Nations had, and have over the Ports and Havens belonging to their several Nations, which undoubtedly they had and have, as hath been shewed before ^r. And upon Letters of reprisal no man by virtue thereof taketh or seiseth any Ship or Goods within any foreign Port, or any Port or Chambers of a foreign Prince other than the Ports and Chambers of that Prince, against whose Subjects the same were granted. And in such Cases as these, which have relation to the Subjects of foreign Princes or States, it is necessary to deduce, that such a fact was done *super alto mari, et hoc est quoad Portus suos*: But in other Cases for Maritime businesses done either upon the Port, or contracted for upon the land, it is sufficient in the first to lay in the libel that they were

⁹ Seld. *Mare clausum*, *De dominio maris per totum*. ^r Super l. 1. cap. 2.

done *infra fluxum et refluxum maris*, and in the last *infra jurisdictionem Admirallitatis*, as hath been already said, and shall hereafter be more fully shewed.

For that which followeth in the next place out of *Stamford*, I joined it with that of 8 *Ed. 2.* and have already spoken thereto^s.

Next it is said 4 *et 5 Ph. et Mar. Dyer*, 159. 6. ^t by the libel in the Admiralty, the cause is supposed commence *sur le haut mere, et infra Jurisdictionem de l' Admiralty, ubi revera facta fuit in tali loco infra corpus Comitatus et non super altum mare*; whereby (saith Sir *Edward Coke*) it also appeareth that the Lord Admiral's Power is confined to the high sea.

This Conclusion can no ways be deduced out of the premisses, for though by the libel in the Admiralty Court, the cause was supposed to commence *sur le haut mere, et infra Jurisdictionem de l' Admiralty*, and perhaps falsely so suggested, because the thing was done in some Town within the body of a County: for the instance is *ubi revera facta fuit in tali loco infra corpus Comitatus*; which *locus* may be any in-land Town within any County, and *non super altum mare*, as it is deduced in the libel. For it doth not say *ubi revera facta fuit super tali Portu infra corpus Comitatus*: If by the Libel the cause had been supposed to have commenced in *vel super tali Portu infra fluxum et refluxum maris*, then the words of the Authority might have run thus, *ubi revera facta fuit in tali loco infra corpus Comitatus, et non super talem portum, vel infra fluxum et refluxum maris*, as well as *non super altum mare*; for the words, *et non super altum mare*, are only in affirmance of the contrary to what is laid in the Libel, and no ways confin-

^s Super hoc capite. ^t 4 et 5 Ph. et Mar. Dyer, 159. 6.

ing the Admiral's Jurisdiction to the particular place laid in the Libel, specifying and designing that very place where such a particular act was not done. If so be in the Libel it had been laid, that this act had been done about the mid-way between *Dover* and *Callis* ; and the Authority had said, *ubi revera facta fuit in tali loco infra corpus comitatus*, and not in or about the mid-way between *Dover* and *Callis*, I hope no man will say, that by this authority the Admiral's Jurisdiction had been confined to that part of the seas that is about the mid-way between *Dover* and *Callis* ; so that it is plain this conclusion cannot be drawn out of the authority.

The rest of the Authorities which follow concern Contracts made at land of things to be done and performed at sea, and of things done or contracted beyond the seas, which
 " I shall defer to their proper places.

There be two things more urged to prove the Admiral's Jurisdiction to be confined to the high Seas, and not to be upon the Ports and Havens, which are not cited amongst his Book Cases and Authorities of Books, but are cited before them ; one amongst the Premunire's by him cited, which I have spoken to already ^x, and the other cited amongst the Prohibitions by him cited, which concern Contracts, and are referred to their proper ^y places.

These two I shall here insert before I proceed to the next chapter.

The first of them is urged out of the book of Entries, fol. 23. tit. ^z *Admiralty*, where it ap-

^u *Infra* lib. 3. c. 2, 3, 4, &c. ^x *Sup.* lib. 2. c. 7. ^y *Infra* l. 3. c. 2, 3, 4, &c. ^z Book of Entries, fol. 23. tit. *Admiralty*.

peareth (saith he) that the taking of a Ship called the *Trinity of London*, lying upon the River of *E.* in the County of *Kent*, is not *super altum mare*, but *infra corpus comitatus Cantiae*, and therefore a Suit for the taking of that Ship lying there, in the Admiralty Court, before *John Earl of Huntingdon* Admiral of *England*, appeareth to be against the said Statutes, and yet no question that was *infra fluxum et refluxum maris, et infra primos pontes*.

Here he saith, that the taking of that Ship in that place appeareth to be against the said Statutes, but mentioneth not what Statutes, having quoted divers before. If there had been a Judgment in the case, he certainly would have added this proof to the Judgment of *Burton and Putt's Case*, and have averred it to have been against those Statutes of the 13th and 15th of *Ric. 2.* and *Hen. 4.* but here it is inserted amongst the Premunires by him cited, and the Statutes next before mentioned, are the Statute of 32 *Hen. 8. c. 14.* and the Statute of *Ric. 2.* concerning Premunires, which must be the Statutes, against which this taking must be said to appear to be; by reason he saith it appeareth to be against the said Statutes, which must be meant of the next mentioned preceding Statutes: If then, it appeareth there to be against the Statute of Premunire, I hope it hath already ^a received an answer: If against that of the 32d of *Hen. 8. c. 14.* it cannot be so, as shall be shewed when we come to treat of freight and ^b contracts, where we shall have occasion to mention that Statute against his tenents.

The other thing by him urged, doth next precede the prohibitions by him quoted *ex Rot. 140. Mich. 16 Hen. 8 c.* The River of *Thames* at *Bil-*

^a Super l. 2. c. 7.
140. Mich. 16 H. 8.

^b Infra l. 3. c. 2, 3, 4, &c.

^c Rot.

linsgate (saith he) is not within the Jurisdiction of the Admiralty, but *infra corpus comitatus*.

This followeth next after the Premunires, and precedeth next before the Prohibitions by him quoted, that the River of *Thames* at *Billingsgate* is not within the Jurisdiction of the Admiralty. By this Record it must appear thereby not so to be, either by a Premunire brought or by a Prohibition granted, (as I conceive) being inserted in that place, and must have some relation either to what precedeth, or what followeth.

If the River of *Thames* at *Billingsgate* by this Record appear to be *infra corpus comitatus* by a Premunire brought, I can say no more to it than I have already^d said. If by a prohibition granted only, it proveth nothing ; for many a prohibition hath been granted, and consultations have been awarded without denial of the suggestions. And oftentimes prohibitions have been granted upon such suggestions as could not be maintained, but deserved consultations upon the debate thereof ; and sometimes the parties have come to an agreement after prohibition granted, when consultations would have been awarded if they had been sued for, which are said to be Judgments in such Cases ; but a prohibition is no proof until a dispute had upon the validity, and a determination thereupon, no more than the bringing of an action at the Common Law, and giving a Declaration without any further proceedings, is a proof that what is by Declaration claimed, is due, or that the action was duely and legally instituted and brought.

^d Supra 1. 2. c. 7.

C H A P. IX.

That the Rhodian and other Maritime Laws were ordained as well for the decifion of the differences happening upon the Ports and Havens, as upon the high Seas.

ALL these Proofs and Authorities which I have handled in the four last and next preceding Chapters being collected and gathered into one heap, as by Sir *Edward Coke* they are, and taken by themselves do make a specious shew and a fair colour for the turning the Lord high Admiral of *England* out of his Jurisdiction, upon the Ports, Creeks, and Havens of the Sea, but no more than a shew or colour as appeareth to my view.

For the antient, constant, and continued Practice of the Admiralty Court, and all the Proofs, Precedents, and Authorities, which make to the contrary of what is by him set forth, being with them well weighed and considered, all that he hath shewed in this particular, will serve only to prove what interruptions have been put, and inrodes made upon the Admiralty Court: For certainly the Proceedings, Acts, and Judgments given in the Admiralty Court concerning busineses agitated and done upon the Ports and Havens, will as precedents for the Admiral's Jurisdiction there, amount unto a great number for those few he hath quoted against it.

The Jurisdiction of the Admiralty and the Jurisdiction of the Common Law, having always been two distinct Jurisdictions, having no dependency each upon the other, but both exercised
under

under the Kings of *England*, * I know not why the antient Practice and Precedents of the Admiralty Court should not be as convincing in the proof of this particular, which resteth in controversy between them, as the Practice and precedents of the other: But it is like enough some will be ready to aver that the Admiralty Court is not a Court of Record, and therefore precedents of that Court are not of so great credit as the Precedents of the Courts of Common Law, but it will be very unfit for me to enter into that dispute, when as it is upon the matter put to the question, whether it be so much as a Court at all, or not: For if it shall have the cognizance of scarce any cause at all (as it cannot have, if all be true that Sir *Edward Coke* would prove, as I shall shew hereafter, when I come to sum up all together) then doth it not deserve so much as the name of a Court.

This only I shall say by the way, that when it was a Court, or if it be a Court, it hath been, and is as much a Court of Record as all Courts in foreign Nations beyond the Seas have been, and are; and whatsoever hath in that Court been, or is done, being legally transmitted and certified, would have carried, and doth carry along with it as good credit in all parts of Christendom as any Record whatsoever, certified out of any of the Courts at *Westminster*, and so will and doth at this present for any thing therein transacted. But if I should enter upon the precedents in Civil causes, which are to be brought out of the Registry of the Admiralty for the cognizance of causes done upon the Ports and Havens, I should make my self an endless piece of work; and when I have

* Ut super l. 2. c. 1.

done, those things, perhaps may for all that hath been said, be thought by many not to be authentick: I shall therefore pass them over, and come to those things which are as authentick in my poor judgment, for proof of the Admiral's Jurisdiction upon the Ports and Havens, as any thing that hath been brought against it. And I shall begin first with the *Rhodian* and antient Maritime Laws, made, ordained, and appointed for the decision of Maritime causes arising and happening as well upon the Ports and Havens as upon the high Seas, and then proceed to other proofs.

By the Laws of the *Rhodes* and other Sea Laws inserted into the body of the Civil Law, which give directions how to steer the Judicature of so many causes, which may happen and fall out upon Ports and Havens, it manifestly appeareth that things there done, and controversies thence arising are properly cognizable by the Admiral, no other Law having the like grounds, or affording the like rules for the decision of such differences, or giving such directions for the avoiding of strife in businesses of that nature: To introduce them all here would make a Volume, which I intend not; and it would be too tedious a labour to effect that which so few regard, namely to set forth the most exquisite excellency of the Civil Law founded upon the very strength of reason it self. But why should I so highly commend that which is so much scorned, either to be understood, or so much as look'd after, and by some condemned before it be look'd into, or at all understood what it is? Serjeant *Callis*^f condemneth the Imperial Law, which (saith he) the Civilians use; for that the Sea-shore is therein held to be common to all, and saith

^f Serjeant *Callis* Lect. 1. p. 31.

that the Common Law of *England*, doth in reason surpass either the Imperial Law or the Civil Law ; which distinction sheweth the understanding he had in those two Laws, which the world hitherto made but one. And Sir *Eward Coke* condemneth the Civil Law for proceeding by paper proofs (as he calleth them) slighting them, as if those proofs that were taken without a publick Notary, without the repetition of the Witnesses before a Judge, or without the liberty of administering Interrogatories by the adverse party at the same time, and only expressed by word of mouth, and neither set down in Paper or Parchment, but passeth away with every air, were better taken and remained more perfect on record, than those paper proofs which are in such manner taken, and with as much care preserved. But surely in most controversies which do arise from a thing done upon the Ports and Havens, it is most necessary, that the proof for the decision thereof, be taken by such paper proofs ; sometimes in regard of the speedy return of the Witnesses into the parts beyond the seas, who cannot stay such an examination (without their undoing) as to be present to afford their testimony *viva voce* at the time of the trial : sometimes in regard necessary and requisite Witnesses are hence departed before the Suit be instituted, and reside beyond the Seas, where their testimony must necessarily be taken by Commission, which, by the manner of proof made at the Common Law, cannot be done ; so that most differences which do arise from things done upon the Ports and Havens, must be proceeded in according to the rules of the Civil Law, and have their determination from the same, or else be decided without testimony, which is to judge blindfold, or else to rest unadjudged, and the wronged

wronged and injured party to be left remediless and unrelieved. But it will be answered; that in such cases they may have a Commission out of the Chancery for that purpose: To which I must reply that the Controversy is whether the cognizance and trial of causes arising from things done upon the Ports and Havens doth belong to the Common Law, or to the Civil and Maritime Law. And then surely it must more properly belong unto that Law and that Court; which can of it self without the assistance of any other Court make a complete proceeding and trial, and give a direct judgment according to express rules of Justice in such causes; than to that Court, which without the assistance of another Court can do neither. Neither can the Common Law Courts in very many such causes of it self proceed for want of such Commissions; neither hath it in as many causes any express rules to direct the Judicature thereof. I shall here set down some few of those Laws, which the Civil and Maritime Laws give in such Cases, so far forth only as to shew that the Maritime Laws were ordained as well for the Ports and Havens; as for the main Seas.

First then for the lading of a Ship, which is always or commonly in a Port or Haven; the Civil and Maritime Law directeth who of the Ship shall be chargeable with such Lading, as shall be put aboard the said Ship, and who shall not; *Sunt quidam in navibus, qui custodiæ gratiâ navibus præponuntur, ut ναυφύλακες, et diætarii: Si quis igitur ex his receperit, puto in exercitorem dandam actionem; quia is qui eos hujusmodi officio præponit, committi eis permittit; quanquam ipse navicularius vel magister id faciat quod χειρέμβολον appellant: Sed et si hoc non extet, tamen de recepto navicula-*

*rius tenebitur: & non debet per remigem, aut me-
sonautam obligari, sed per se, vel ^h navis ma-
gistrum.*

This Law doth not only shew who is charge-
able with the Wares and Merchandizes laden
aboard of the Ship, but likewise what things they
are chargeable for, and saith, *Quod cujusque sal-
vum fore ⁱ receperint, hoc est, quamcunque rem sive
mercem receperint*, and lest it might be thought
that it is only meant of Wares and Merchandizes,
and nothing else, it explaineth it self yet further,
and saith *ad eas quoque res hoc editum pertinere
quæ mercibus accederent, veluti vestimenta quibus in
navibus uterentur, et cetera, quæ ad quotidianum
^k usum habemus; et parvi referre res nostras an
alienas intulimus, si tamen nostra intersit salvas
esse ^l*. And as soon as such Merchandizes and
other Commodities are put aboard the Ship, whe-
ther she be upon Port, Haven, or any other part
of the Seas, he that is *exercitor navis*, is charge-
able therewith; and if the same be there lost or
purloined, or sustain any damage, hurt, or loss,
whether in the Haven before, or upon the Seas
after the Ship be set forward on her voyage, whe-
ther it be done by the Mariners or any other
through their permission or negligenee, he that
is *exercitor navis*, is to make good the same.

For saith the Law, *recepit salvum fore, utrum
si in navim res missæ ei assignatæ sint, an etsi non
sint assignatæ, hoc tamen ipso quod in navim missæ
sint receptæ videntur, et omnium recepit custodiam
quæ in navim illatæ sunt: Et factum non solum
nautarum præstare debet, sed et ^m vectorum.*

^g F. nautæ caup. stab. l. 1. sect. 3.
Eod. et ead. l. sect. 6. ^k Eodem.

^h Ead. l. sect. 2.

^l Ead. l. sect. 7.

^m Ead. l. sect. recepit.

And in these cases two several Maritime actions do lie, whereof the agent hath his choice. *Dicendum duas proponi actiones exercitorias: una est de recepto in simplum, quæ dicitur in factum; altera est actio in factum è delicto nautarum ex quasi delicto exercitoris qui videtur delinquere quod improbis nautis utatur. Et hæc est in duplum, sed in eam non venitⁿ factum vectorum.*

So that the very lading of goods aboard the Ship, chargeth him that is *exercitor navis* therewith (which the Common Law doth not;) for he is liable for whatsoever his Mariners shall do aboard the Ship, be she in Port, Haven, or upon the high Seas; but he is not liable for what they shall do, being at land, and not aboard the Ship: so that the Ship maketh distinction of actions, but maketh no distinction at all between her being upon the high Seas, or upon Port or Haven; *Debet Exercitor omnium nautarum suorum sive liberi sint, sive servi, factum præstare; nec immerito factum eorum præstat, cum ipse eos suo periculo adhibuerit; sed non^o alias præstat, quam in ipsa nave damnum datum sit, cæterum si extra navim licet a nautis non præstabit.*

But if the Exercitor shall receive goods on the shore in nave custodienda sive transportanda, and shall lose them, or suffer them to be stolen from him before they shall be laden aboard the said Ship, he shall be liable to make satisfaction. *Idem patet etiam si nondum sint res in navim receptæ, sed in littore perierint, quas semel recepit, periculum ad eum pertinere.*

If therefore he be liable for such goods as he shall receive upon the shore to be put aboard his Ship, and transported, in case they there perish,

ⁿ Gloss. super eod. sect. verb. et factum.
debet Exercitor.

P Eod. l. et ita,

• T. eod. l.

or be otherwise damnified, much more shall he be answerable for such goods and merchandizes as he shall receive, or shall be laden aboard his Ship, if the same perish or be damnified in or upon the Port or Haven.

Those Laws of the *Rhodes* which we find inserted into the body of the Civil Law, which are the ancientest Sea-laws extant, do treat of the casting overboard of goods in a storm or tempest for preservation of the Ship, and the remainder of goods, and of the Average payable out of the same, whether the Ship be in such stress of weather upon the Ports or Havens, or upon the high Seas; and the rules there set down do serve as well for the one place as the other.

These Laws and Rules being general, and not restrained to the high Seas, do sufficiently prove that they were constituted and ordained for all places where a Ship might fall into such danger, that by this *factus mercium* the Ship and remainder of the Goods and Merchandizes might be preserved. And such danger doth not always fall out upon the high Seas, but oftentimes upon the Ports and Havens.

But lest this shall be thought not sufficient, but that notwithstanding the generality of the Sea Laws, which have provided directions sufficient for what is to be done in such cases, yet they were to be made use of only when such accidents happened and fell out upon the high Seas; and that they were constituted and ordained only for such causes falling out upon the high Seas, and not upon the Ports and Havens, but lest such causes there falling out unto the cognizance of the Common Law here in *England*, and other municipal Laws in other Nations. I shall here set down one express Law, inserted amongst the rest of these Sea Laws,

Laws, which sheweth that all these Laws were as well appointed for such causes happening upon the Ports and Havens, as they were ordained for those that fell out on the high Seas, which Law maketh further provision in a cause of the like nature, happening either upon the high Sea or Port in express words, and sheweth plainly too, that all the rest were constituted and appointed for both; which runs thus: *Navis onustæ levandæ causa (quia intrare flumen vel portum non potuerit cum onere) si quædam merces in scapham trajectæ sunt, ne aut extra flumen periclitetur aut ipso ostio vel portu, eaque scapha submersa est; ratio haberi debet inter eos, qui in nave merces salvas habent, cum his qui in scaphâ, perdiderunt perinde tanquam si jactura facta esset* ¹.

Here it is manifest by this Law, that if for the lightening of a laden Ship, because she cannot enter into the River or Port with her burthen, some of the Goods shall be put into the Ship's boat, lest the Ship should be endangered either without the River, or in the door of the Sea or Port itself, and that Boat shall be drowned, a consideration is to be had between those which have their Goods saved in the Ship, and those that have lost their Goods in the Boat, as if there had a jacture made; so that here we see the same rule holdeth for the preservation of a Ship, as well within the Port or Haven, or the mouth or door thereof, as for her preservation upon the high Seas.

It may be further observed out of this Law, that *ostium maris* and *portus maris* be both one and the same thing: for as *ostium* is a door gate or entrance, so is *portus* a Port or Portal, beginning or

¹ F. de leg. Rhod. l. Navis onusta.

entrance of the Sea, or into the Sea ; and that *ostium maris* is not an imaginary thing between the Sea and the Port or Haven, as Sir *Edward Coke* would have it to be ; for as, by saying a Port or Haven, we mean but one and the same thing, intimating that you may take which term you will, as this Law doth in the beginning by the words *flumen vel portus*, mean one and the same thing, when it saith *quia intrare flumen vel portum non potuerit, etc.* so doth it in the next place by *ostium* or *portus* mean one and the same thing likewise, when it saith *ne periclitetur aut extra flumen, aut in ipso ostio, vel portu*, the (*aut*) making the disjunctive, and not the (*vel*). And indeed the whole Port with all its banks is door slender enough for the keeping of the raging waves and wallowing billows of the Sea from overflowing the Land. And the banks may properly enough (though they be termed the Sea banks) be said to be the doors of the land, to keep the Sea out of it ; yet must the Haven or Port, wherein the water floweth and refloweth, necessarily be said and concluded to be the door, portal, or entrance, whereat all Ships and Vessels whatsoever must necessarily enter into the main Sea ; and this door of the Sea is as much a part of the Sea, as a door of an house is a part of that house where it is the door, and doth more properly belong to the Sea than to the land, whereof it is no part, but different and is distinct both in name and nature, being two severall Elements ; and the causes arising from things done either upon the high Seas or upon the Ports, being of one and the same nature, all belonging to Shipping, Navigation, Trading and Commerce, &c. they are all more properly cognoscible and triable by one and the same Law than by two, namely by the Civil and Maritime Laws,

than

than by the Civil Law and the Law of the land too. For *nulli prorsus audientia præbeatur, qui causæ continentiam dividet, et ex beneficii prærogativa id quod in uno eodemque judicio poterat terminari apud diversos judices voluerit ventilare, pœna ex officio judicis eminente ei qui contra hanc supplicaverit sanctionem* ^r.

And the Rules of the Civil and Maritime Laws in Cases of this nature are very many, and very observable for the directions of the Judicature therein, setting forth what is to be done according to the variation of the Case, as the Law *navis onustæ* beforementioned setteth forth what is to be done, in case divers Goods and Merchandises be taken out of the Ship and put into the Boat, and the Boat perish; so contrary, if the Ship and remainder of Goods and Merchandises remaining in her perish, either upon the Sea or in the Port, and the Boat arrive in safety with the Goods and Merchandises put into her, ^s the same is to be done.

It is not enough to know a general Rule, without its exceptions and limitations; nor is it enough to know that *si levandæ navis gratia jactus mercium factus est, omnium contributione sarciatur*, ^t that an average must be had upon all the Goods that are saved, towards satisfaction of the owners of those Goods that were cast into the Sea; but it is necessary to know (in case the average be not agreed of) what action those whose goods were cast into the sea, have against the Master of the Ship for those goods, and what action the Master hath against those whose goods were saved, ^u and what the duty of the Master is in these cases.

^r Cod. de judi. l. nulli. ^s F. ad legem. Rhō. l. navis.
^t Eod. l. lege. ^u Ead. si laborante et gloss. et sect. cum in ead. et ibi gloss. et l. amissæ et l. cum depressa.

It is likewise necessary to be known, and the Civil and Maritime Laws do set forth whether the Ship be liable, and ought to be cast into the average or not ; and whether if the Ship be worn and become worse by the tempests and storms, she shall be considered therefore out of the ^w average of the goods saved ?

And likewise these Laws set forth what is to be done in case there be goods and merchandises of several sorts, and many passenges, bondmen and free ; and whether goods of all sorts ought to be cast over, and what is to be done in case there be goods aboard which do not burthen the Ship, as Jewels, precious Stones, and Rings ; and at what proportion or rate they are to be cast into the average ; whether Apparel, or the Passengers and Merchants wearing Rings ; whether the Passengers themselves, and their, or the Ship's victuals shall be cast into the average, the contribution shall be made according to weight, or according to the value, ^x *an prout ponderant, an prout valent.*

It is considered by the same Laws likewise, if a Ship be taken by a Pirate, whether upon the Sea, or upon a Port or Haven, and be redeemed, whether all must contribute or not ; and if any thing be taken away by Thieves or Robbers, whether he must lose it that did own it ; and if any one redeem what is so taken away, whether ^y Contribution ought to be made for the redemption.

And it is considered how and in what manner this average is to be made, whether the goods lost are to be valued by themselves, and the goods saved by themselves, or whether altogether, and whether goods lost are to be valued according to the price they were bought for, or according to the price

^w L. ead. § si conservatis. ^x Ead. cum. in ead. et ibi gloss.
^y Ead. § si navis.

they might have been sold at, and at whether of those two ^z prices the goods saved are to be valued?

It is likewise considered, whether if a Servant or Slave in the casting over-board of the goods doth happen to be drowned, whether any estimation be to be made of him; and if any of the Passengers be not *solvendo*, whether the payment of his share belongeth to the Master or not? Whether if the goods cast over-board be again recovered, contribution ought to be made? If contribution have been made, whether it be to be restored, and in what way the Master ought to proceed against him that hath so received it? and in what way the Contributors ought to proceed against the Master. And whether goods so cast over-board are to be accounted *pro derelicto*, and so become theirs who shall afterwards possess them, or not be so accounted, but remain still the owners? *Utrum^a res Domini manent, an fuerint occupantis?*

It is likewise considered by these Laws, whether if the Master, to avoid danger, shall cut off, or throw over-board any of his Masts or other Instruments belonging to his Ship, for preservation of his Ship and her lading, contribution in this case be due? Whether the consent of the Passengers and Merchants in the Ship be requisite or not? And whether it must be done ^b *justi metus causa*, and who is to judge thereof?

In like manner it is considered, if the goods cast over-board be afterwards regained and saved by such as for pay or reward shall adventure and take pains to effect the same, *si per urinatores recuperata sint et extracta*, and the Ship with the re-

^z Ead. § portio.

^a Ead. sect. severum sect. signis sect. si res et sex. res autem et l. qui levandæ

^b L. cum arbor, et l. amissæ sect. arbore.

mainder of her lading shall afterwards be cast away, whether the goods so regained shall contribute to the other afterwards cast away ? And if some of those goods cast away with the Ship shall in like manner be recovered, whether they shall contribute unto him that made the first ^e jacture.

After a jacture or casting over-board, if some of the goods that be saved be deteriorated, damaged or made worse ; by these Laws it is considered, whether they were so hurt by the ill stowage, or by the dashing of the water at the time of the jacture, or by the uncovering of them ? It is considered likewise, whether the damage be more than the contribution will come to, or the contribution will come to more than the damage is ? And then it is determined whether the damaged goods shall contribute or not, and if they shall, ^d in what manner ?

If a Ship be split, or any otherways cast away, whether upon the Seas or upon a Port, and the goods some or all be preserved and saved, it is determined whether the goods shall contribute to the loss of the ^e Ship or not ?

If the Masts of the Ship, whether upon the Sea or upon the Port be shivered into pieces, and the sails and other tackle be consumed with lightning, and the goods by what means soever preserved, though by obtaining new Masts, new Sails, and new Tackle, &c. these Laws determine whether the owners of the goods be to make ^f contribution or not ?

Hereby it is plain that the special Cases, which are comprehended under one general Law or Head, are very many and various, and require va-

^e Tit. eod. l. Navis fest. sed si.
et gloss. ^e E. ead. l. amissæ.
gloss. et l. cum depressa.

^d L. ead. fest. cum autem
^f Eod. navis adversa et

rious decisions or judgments, which are upon express reasons by the Civil and Maritime Laws and Commentators upon them most exquisitely set forth, as he that shall look thereinto shall find.

If one Ship shall fall foul upon another, either upon the high Seas or upon any Port or Haven, so that either or both of them have sustained hurt or damage, the same Laws do most exquisitely determine between them. And under this head do likewise fall very many various cases, variously by those Laws determined according and agreeable to most excellent reason ^g.

If the Mariners shall do damage to the Merchants goods, as by drawing out and drinking up their Wines, &c. whether they do it upon the Seas, or when the Ship lieth at Anchor upon any Port or Haven, the case is the same; and the Civil and Maritime Laws determine what is to be done herein: Many general heads more, containing under them several various particulars, might be instanced in, but these are sufficient to shew that the Rhodian and Maritime Laws were ordained as well for the determination of differences happening upon the Ports and Havens as upon the high Seas, and have express Laws for the guiding of the judgment therein; which all Nations do acknowledge and allow, wherein the Common Law of *England* under correction is deficient.

^g F. ad legem Aquiliam l. quemadmodum. Sect. 2, 3, 4, et 5.

CHAP.

C H A P. X.

The Laws of Oleron, and other antient Laws of the Sea, were constituted and ordained, as well for the decision of controversies, happening and arising from things done upon the Ports and Havens, as from things done upon the high Seas.

BY a Record which I have before set down at large, ^a it appeareth that the Laws now called the Laws of Oleron were antient Laws, and antiently practised for the regulating of Maritime and Sea affairs in that Maritime Island, and that those Laws were by *Richard* the First, King of *England*, in his return from the Holy Land corrected and interpreted, and in that Island publish'd in the French Tongue for that purpose, and called *la ley Oleron*. In that this Record saith, they were by him *Correcta et interpretata*, it plainly appeareth that they were made before ; but whether then used in *England* or in that Island only, may seem doubtful : However it appeareth by the Record it self, that after such correction and interpretation, they were likewise published in *England*, and were *ordinata* in *Edward* the First's time, and consummated in the 12th year of *Edward* 3.

Now these Laws being thus established, do plainly shew that the Admiral had and ought to have Jurisdiction upon the Ports and Havens, as well as upon the high Seas, for that they do set forth what is to be determined in controversies

^a Li. 1. c. 4.

arising, as well from things done upon the one as the other. I shall instance in some of them.

If a ship perish in any place whatsoever, whether upon Port, or the main Sea, the Laws of *Oleron* give directions what the Mariners ought to do for the saving of the Goods, and how far the Master may recompence them for their pains, in case they save any of the Goods, and in what manner; whether he may sell or pawn such Goods as are saved, for, or towards their satisfaction; and whether he may sell or pawn any of the Tackle of the said Ship (if saved) without authority from the rest of the owners ^b.

They give directions when a Ship arriveth in any Port or Haven, laden or not laden, when the Mariners may go out of her with leave of the Master, when without, and with how many Cables she ought to be anchored, before they may go out without leave, and what care they ought to take, when they do so to free themselves from making satisfaction for such damage and loss as the Ship or Goods shall sustain in their absence ^c.

They likewise determine in what case the Master shall pay for the healing of a maim, or hurt of a Mariner, and in what cases he shall not, ^d be that done either in the Ship at Sea, or in the Port, or at land.

They set forth likewise what the Master ought to do, in case any of his company fall sick, what care he is to take of him, and what provision he is to make for him at land, and what allowance he is to afford him; ^e all which denied, or if any part thereof withheld, the same is recoverable by these Laws before the Admiral.

^b La ley Oler.
^c Ol. Jud. 7.

^d La ley Oler. Jud. 5.

^e Ol. Jud. 6.

These Laws do likewise set forth other duties of the Master and Mariners, when they come into a Port or Haven, where they are to make their right discharge, as by this judgment appeareth.

Il avient qu'un maistre d'une nef vient a sauvete a sa discharge, il doit monster en aux Merchants lescords avec quoy il quindera, et sil voit amender, le Maistre est tenu a lamender lui, et ses Mariners et y doit partir le Maistre pourtant quil prent in guindage, et doit la guindage estre mys pour restorer le dammage primerement et le remenant soit estre eulx, maiz se cordes rompent sans se quils les eussent monstrees aux Marchants, ilz seront tenus a rendre tout le dammage, mais se les Merchants dient que les cordes sont bonnes et belles et ilz rompent chun doit partir au dammage: Cestassavoir des Merchants a qui le vin sera tant seulement, et cest le judgement en ce cas.

And clearly this is a Judgment upon a thing happening upon a Port or Haven; and no where else; whereby the Judge of the Admiralty is to be guided in busineses of this and the like nature.

How a Master ought to behave himself towards and amongst his Mariners, and the Mariners towards the Master, and they amongst themselves, be they upon Seas, or Port, or Haven, and what the punishment is in case they demean themselves otherwise, is by these Laws plainly shewed.

The same Laws have likewise provided what is to be done in case one Ship shall do damage or hurt to another, upon the Port or Haven.

Une nef est en ang comis a marée, et estant a sa marée avec autre nef vient et fient la nef qui est en sa paix, en telle maniere q'elle este dommagée du coup que lautre nef luy donne, et y ades vins en fundrez dedens

¶ Ol. Jud. 9. in quibusque l. jud. 10. ¶ Ol. Jud. 12. in quibusque lib. 11.

le dommage doit estre apprise et party parmaite entre les deux nef, et les vins qui sont dedens les deux nef doivent parti, &c. Et est raison pour quoy cest Judgement est fait et ainsi feust quil avoit tout le dommage amende une vieille nef se myst volontiers en la voire dune melleure nef pour auder avoir lautere nef se elle eustous ses dommages, mais quant elle sceit q'elle doit parir al a moitie, elle se mett volontiers hors de la voye, et cest le Judgement en ce cas ^b.

By these Laws likewise are determined differences falling out between Ships lying at Anchor, upon any Port or Haven, and determine what is to be done in case one Ship cast Anchor too near another, and who shall pay the damage in case any shall be sustained thereby, or for want of buoys, &c.

Une nef ou deux ou pleuseurs en ung havene ou il ya pou deave, et si assech lune des nef trop pres de lautre, le maistre de celle nef doit dire aux autres mariners, Seigneurs levex ure ancre, car elle est trop pres de nous, et pouroit faire damage, et ilz ne la veulent lever, le maistre poureulx et ses compaignons la vont lever et a longmer de lui, et silz la faillent a lever et lancre leur face damage, ilz seront teneuz a lamander tout au long. Et sil yeust mys ancre sans boye et elle face damage, ilz seront tenuz a lamander tout au long, et silz sont en ung Haven qui assech, ilz seront tenuz a mettre balingues aux ancrs quilz ne peregent au plan, et cest la Judgement ⁱ.

What meat the Mariners may carry out of the Ship to land, how long they may stay before they return, what damage happening either to the Ship or Goods (being in the Port or Haven) in their absence, they are liable unto; these Laws do deter-

^b Ol. Jud. 15. in aliis, lib. 14.

ⁱ Ol. Jud. 16. in aliis

mine, besides many other accidents happening in and upon the Ports and Havens, which are by them decided : as when a Ship shall by contrary winds, and stress of weather, be tired at Sea, so that she is constrained to make to a Port not intended, and there is in want of Victual or Tackle and Furniture, to set to Sea again, and wanteth money wherewith to victual, tackle, and furnish again, what the Master may then do, whether he may pawn or sell the Merchants Goods for relief of the Ship, what and how much of the Goods he may so pawn or sell, when the case is that he may so do, and when and upon what occasion he may sell the Ship, and by Law is warranted so to do, and when not ^k.

The same Laws do determine what is to be done, in case a man take upon him the office of a Loads-man or Pilot, and by reason thereof undertaketh to bring a Ship safe to Anchor in the Port of her discharge, and through his negligence or want of skill, the Ship be cast away or perished, or the Goods damnified, in the Port or Harbour ; and likewise, when and upon what grounds such Pilot or Loads-man shall be discharged, and how and in what manner the Master of that Ship shall be liable ^l.

These Laws set forth likewise what is to be done by the Master of a Ship, when his Ship arriveth in the right Port of her discharge, and hath stayed there by the space of one and twenty days for discharge, and is not in that space discharged. More particulars I might instance in, out of the said Laws of *Oleron* to the same purpose, and how far the said Laws are extended or limited by latter writers upon the Civil and Maritime Laws ; but

^k Ol. Jud. 21. in aliis, l. 20.

^l Ol. Jud. 33, 34. & Jud. 24.

that

that will be a work more properly to be entred upon, when this Jurisdiction of the Admiralty shall be completely settled, and freed from interruptions in its due proceedings: I shall therefore only set down this last Judgment, in its own language, not endeavouring to shew what the Law is either in this case, or any of the other before recited, but to conclude that by these Laws so long since established for the directions of Judgments in Maritime causes, it plainly appeareth that the Ports and Havens are within the Jurisdiction of the Admiralty, and that all differences therein, or thereupon arising, are cognoscible and triable in the same.

The words of the Judgment are these.

Item, ordonne est pour coustume de mer, q'se une nef arrive en ung Port a sa droitturier le descharge et demoure la nef illecq', charge jusq's a xxi jours ounrables la mettre puet bien mettre hors sur ung keye, et le Maistre doit ordonner et bailler ung de ses Mariners au Marchant pour prendre garde aux vins ou autres derrenes jusque a tant q'le Maistre soit pay de son fret^m.

Et cest le Judgement en ce cas.

Very many more there are, which will be too tedious here to set down: None of all which is by any part of the Common Law treated of at all, nor can it, if it keep its own rules, render the same Judgment with these Laws, but a diverse, if not in many cases a clear contrary.

^m Ol. Jud. 32.

C H A P. XI.

That by the ancient Statutes of the Admiralty settled before the last Confirmation of the Laws of Oleron 12 Edw. 3. and Articles of enquiry added thereunto, it is plain that the Admiral hath Jurisdiction upon the Ports as well as upon the high Seas.

THERE are likewise ancient Statutes of the Admiralty to be observed, both upon the Ports and Havens, the high Seas, and beyond the Seas, which are comprised in an old authentic Book, called *The black Book of the Admiralty*, which Statutes are ingrossed upon Vellum in the said Book, and written in an ancient hand, in the ancient French Language, which plainly shew the Admiral's Jurisdiction to be upon the Ports and Havens, as well as upon the high Seas. I shall set down only one of those Statutes for proof thereof, which sheweth how and in what manner damage done by one Ship unto another in a Port or Haven, as well as upon the high Seas, shall be satisfied in case the same be wilfully done, and how, and in what manner in case the same be unwillingly done by chance, by reason of tempest or other mishap. The words of the Statute are these.

It que nulle nef ne vessel de la flotte, pour orgueil ne pour haine ou envie, sur le mer ou entrants es ports ou en port ottroie veille au dommage dautre nef ou vessel de la flotte au pris par ceux de la flotte, sur payne de faire playne amende de ce qui est endommagé en son default ; et qu'endommagé et debrysse autres entrants aux ports, ou dedens ports, ou sur le
mere

mere neuvoillautz par cause de tempeste ou autrement il paiera et amendera la moitie du dommage a la discretion ^a et Judgement de l'Admiral.

There are likewise in the same Book added unto these Statutes the Oath and Articles, whereupon Juries were and are to make their presentments unto the Admiral, all written with the same hand, the Oath only in old *English*, the Articles in the same Language, with the Statutes which shew what things are inquirable and presentable before the Admiral, and there punishable, and how and in what manner such offences are to be punished: out of which it is easily and plainly to be gathered, that the Admiral hath a full and complete Jurisdiction, exclusive to all others upon all Ports, Havens, and Creeks of the Sea. I shall here set down verbatim the Oath to be administred unto the Jury, and some few of those Articles, which shew the Admiral's Power and Jurisdiction to be upon the Ports and Havens.

The Oath.

This here see my Lord the Admiral that I John atte nashe well and truly enquire for our Lord the King, and well and truly at this time thou serve at this Court of th' Admirate, present as moch as I have in knowleche, or may have by information of eny of all my fellows, of all mane Articles or Circonstances that touchen the Courte of the Admirate and Law of the Sea, the whiche shall be grate to me at this time; and I thereupon sworne and charged and of all other that may renewe in my minde, and I ne shall for nothing lette, that is for to say, for Franchise, Lordship, Kynreden, Aliance, Friendship, Love, Hatred, Envy, Enemytee, for dred of lost of goodnee, for

^a Stat. ult. pa. 16.

non other cause that I shall so doo the Kings Counseills, my fellows and myne owen wel and trewly bele what oute fraude or malengyn. So God my help at the hollydome, and by this Book.

Next unto this Oath is set forth the punishment of the Jurate that shall disclose the secrets of the King, or any of his fellow Jurates, to be inflicted upon him by the Admiral ^c.

The very first and second Articles to be given in charge are for Theft committed upon any Port or Haven, and the punishment thereof set down. These are the words in the Articles.

Soit^d equis des larrons es ports Comen de cords batenlz autres ancrs et autres appareils des nefz se nul est endite quil a felon neusement pris ung baten ou ancre que passe xxi d. il sera pendu sil este de ce conviète.

It. ^e se an cuy est endite quil a felon neusement pris ung boye, rope de quelle value quil soit et soit lie a ung autre dedens leave, pour la boye il sera pendu sil nest de ce aquite.

And so ^f they proceed to set down the punishment of him that shall cut any Cable, whereby the Ship is cast away, or any man lose his life, &c.

And ^g of such as shall remove an Anchor.

And likewise of such as shall rob Strangers Ships, not being enemies.

And ^h how their goods shall be restored to them, though they pursue not the Felon to death.

And ⁱ what course is to be taken in case of such robberies.

Petty Larceny^k is by that Law punishable upon the first conviction, by forty days imprisonment;

^c Pag. 18.

^d Art. 1. p. 18.

^e Art. 2. p. 18.

^f Art.

3. p. 19.

^g Art. 4. p. 19.

^h Art. 5. p. 19.

ⁱ Art.

6. p. 20.

^k Art. 7. p. 20.

upon the second, half a years imprisonment; upon the third, death.

By the next ^l Article, common disturbers of Ships and Passengers, either upon the Seas, or the Ports, are to be inquired of, and their punishment is therein described. *Item soit en quis de tous communs malfaiseos sur la mer et en ports se acun homme est endite, quil soit comun malefaisseur, il sera pris par ung caper par le mariscalt, &c.*

By ^m the next takers, that take and pay at pleasure, and so downwards.

What ⁿ Sureties shall be taken of such as shall be convict of misdemeanour.

What ^o punishment shall be inflicted upon common fighters being convict.

What ^p upon him that maimeth any other wilfully.

In what case ^q the Master of a Ship is bound for the forthcoming of his Mariners.

The manner of outlawing and banishing a Felon that absenteth himself, and cannot be taken: And this Law, as appeareth by the Article, was made by Henry the First, which runneth thus:

It. en ^r temps du premier Roy Henry, et en temps de plusieurs Roys devant, depuis quant ung homme estoit endite en fellonnie, l'Admirall ou son lieutenant manderait ung cape a l'Admiral de la Court ou au visconte de la visconte aux second sessions quil restoit trouue, et sera espace en tres deux sessions xxi. ovors ou plus il sera demaunde a la second session solempnement, &c.

And likewise the manner of outlawing and banishing one that hath done any trespass upon any Ship, Tackle, or Furniture thereof, &c. whether

^l Art. 8. p. 21. ^m Page 21. ⁿ Page 22. ^o Page 22.
^p Page 23. ^q Page 23. ^r Page 24.

upon the Seas, or upon any Port, which Law by the Article appears to have been made by the same King Henry the First, and his Admiral of the North and West, and others of authority and power adjoined to them. The Law begins thus:

Item^s gens quit sont banniz en trespass ne seront une banniz sinon par ung an ou deux, &c. se lon la discretion de l'Admirall, et sil est trouue en Angleterre dedens le temps, il avara judgement comme devant est dit, et les biens du banny en trespass ne seront une forfeitz au Roy Comment, &c. And endeth thus: Et ceste ordonnare fuit faite premieremet a Gypswiz out temps du primer Roy Henry per les Admiraltz de North et West, et autres seigneurs adbeirdantz.

If Ships be arrested for the King's service, or for any other reasonable cause by the King's Officers or Admiral, and break the Arrest, the penalty is by these Laws declared; and this Law wherein the penalty is declared, appeareth to be made in the time of Richard the First at Grimsby, by the advice of most of the Lords of the Realm. The Law begins thus:

Item^t soit enquis de nefz qui sont arrestes pour le service du Roy ou pour autre resonnable cause per les officers du Roy ou de l'Admirall et debrisent larrest. And afterwards it followeth thus: Ordonne estoit en temps du Roy Richard le premier a Grymsby per advoys de plusieurs seigneurs du Roylme que quant nefz seront arresters, &c.

Divers other things of the like nature are likewise inquirable in the Admiralty Court, the penalty and punishments whereof are declared by these Laws.

† Page 26 & 27.

† Page 28.

Sir Edward Coke for proof that the Admiral hath no Jurisdiction upon the Ports, amongst other things instanceth in one particular, that 7 Hen. 6. 22, 35. an Action was brought at the Common Law for forestalling in a Port or Haven, because ^u it is *infra corpus comitatús*, which is a thing taken for granted, but no ways proved at all, as is before ^w set forth : I shall therefore here set down two or three Articles, which shew that if by Port be meant within the flood-mark in the Havens, forestalling and regrating there, are within the cognizance of the Admiral in the Admiralty Court; the first is this.

Item, soit enquis de tous Merchants et Mariners, qui vont hors des Ports aux nefes charges de Marchandises, quant les dictes nefes voudroient enteer ouz dits Ports, et les Marchandises achattent en gros et les amesnent aux Ports, et puis les vendent a greigneur et plus chier marche et plus que les preimer Merchans voudroient, engrevance du commun peuple; si aucun est endite en tel cas et conviète par xii. il sera emprisonne per demy an, et puis fera fin autant come les biens ainsi achattex amonterent; mais se la ditte nef soit repose dattendre son temps et homme achate de lui Marchandise, en tel marne il ne serame deseimpesché e ne riens ne perdra vers le Roy ^x.

Another against forestallers in any Ship, is this :

Item, soit enquis de tous ceulx qui achattent bledz poisson ou autres vittailles dedens la nef, en regratant devant quilz soient venuz adeu marche, se aucun est en ce endite, &c. il sera greissuousement pugny et fera fin au Roy de tant ^y, comme la value des bledz ou poisson ainsi achattex amonte.

^u 7 H. 6. 22. 35.
^y Page 34.

^w Sup. l. 2. cap. 8.

^x Page 31.

Another against Reqrators within the flood-mark is this ;

Item, de ceulx qui achattent en gras bledz poisson sale, poisson freiz, ou autre vitaille dedens le flood-marks en Reqratant, &c. aient mesme le ² judgment.

Divers other Articles are there expressly set down against several offences committed upon Ports or Havens, with the particular punishments to be inflicted upon such offenders, as against the exactions of ^a Water-officers. Against any man's appropriating to himself the benefit of ^b salt waters. Against Kidles, Wears, and the like hinderance of the Fishing, which is ^c common to all. Against the false Weights, false Measure, and the like, used in any Ship or ^d Vessel. Against erecting of Mills, or adding or altering any thing about them, to the hinderance, hurt or damage of any Port or ^e Haven. Against the taking up and concealing or keeping back from the possession of the Admiral, any Flotson, Jetson or Lagon found as well upon the Ports, as upon the ^f Seas. Against the excessive Wages of ^g Ship-Carpenters.

All which do plainly shew that the Admiral hath had, and ought to have absolutely power and jurisdiction of and over even such things, and in such causes as Sir *Edward Coke* instanceth in, long before the times from whence he deduceth his authorities : And divers others of these Arricles to the same purpose I might instance in, which for brevity's sake I omit.

² Page 31. ^a Page 31. ^b Page 33. ^c Page 33. ^d Page 35. ^e Page 36. ^f Page 36. ^g Page 37.

C H A P. XII.

That by the Inquisition taken at Quinborough secundo Aprilis anno 49 Ed. 3. Annoq; Dom. 1375. it is plain that the Admiral hath Jurisdiction upon the Ports, as well as upon the high Seas.

EDward the Third by a solemn Inquisition of divers persons most famous for skill in Maritime matters and seafaring busineses, selected and chosen from divers parts of the Kingdom, and assembled at *Quinborough* upon the second of *April* in the 49th year of his reign, *Anno Dom. 1375.* set down certain Laws concerning the Admiralty Court and seafaring matters in old *French*, all which are yet extant in the old authentick *Black Book of the Admiralty* before mentioned. I shall only set down what doth shew the Jurisdiction of the Admiral to be upon the Ports and Havens. The Inquisition first setteth forth who was then Warden of the Cinque-Ports, who Lord Admiral, and who were the Inquisitors, in these words.

Cest l' Inquisition apres Quenesburgh per commandement de nostre sieur Roy Edward le tiers puis la conquest d' Angleterre la 2d jour Avril, l'an de son regne quarante et neufme devant William sire de Latymer Chamberlain d' Angleterre et garden des aul ports, et Mr. William de Nevill Admirall de nostre dit sur le Roy es parties du North pour mettre en certain les points apres ascriptz en maner comme ilx ont este usez donkien temps par les surementz de Robert Loundeneys, Robert, Henry, et William Passelewe de Wychelsey, et Simon Colerede de
Boure,

Boure, Thomas Moys *de* Sandwitz, Bartheu Stigan *de* Standford, John Martyn *de* Grenewiz, Thomas Hering *et* Richard Thebande *de* Gravesend, *et* John Burgeys *leifne*, *et* John Burgeys *a puisne de* Fobbing, Hammond Lovetost, *et* John Snell *de* Bellingham, Thomas Spring *de* Remham, Thomas Rame *et* Richard Lyne, William Jankyn *et* Richard Lorbyn *de* Queneburgh *pour mesmes le points desormais tenir fermement et continuer selon le voier dit apres* ^a *escript.*

So that by this last clause it appeareth that these Laws were thenceforth to be firmly held and continued ; which do thus present themselves.

Et premier dient les avant ditz Jurers per les seremens que se, etc.

It is plain by the 17th Ordinance, that if a Mariner do hire himself to a Master of a Ship, in any Port or Haven, and shall afterwards, before the Ship goeth out of the Haven on her Voyage, forsake and leave her, he shall be punished by the Admiral. The law runneth thus :

Item, que tous ^b *maners de mariners que sont retenuz avec aucun Seigneur de nef pour liu servir a Bordeaulx au ailleurs pour Raisonnable salaire, ainsi comme a este use en divers ports par tout le Royalme, etc. et se aucun manner se voide daucun e nef, en tel cas il sera grevosement amerciez selon la discretion de l' Admiral, et fera gre au possesseur de la nef.*

Hereby it is manifest that the Admiral hath Jurisdiction upon the Ports, otherwise he could not punish the Mariner for his forsaking the Ship there before her going to sea.

And the case is the like in respect of the payment of *Lodmanage*, which being a thing proper to a Port or Haven, is according to the Laws of

^a Pag. 58.

^b Ord. 17. pag. 63.

Oleron, to be decided by the Admiral, as hath been already ^c shewed, is by these Laws again appointed in these words :

Item, endroit Lodemanage dient les avant ditz jurez que leur semble in cest cas elz ne scavent meilleur advys ne remedié, mais que ce soit de force usez, etc. fait par main^e quist continue en la loy d^a Oleron.

And these were established for Laws, against which if any do offend, the Admiral doth justice in such manner, that others may be thereby warned not to offend against them, as appeareth by the last of them, which saith thus :

Item, ordonne estoit que se aucune nef, biens, marchandises, etc. and concludeth with this Clause. Et se aucum y soit trouve rebelle encontre aucun des ditz pointz, quil soit ainsi justise et contraint per l'Admiral quantres y pregnont exemple de luy et redoublet le plus datempler ou aler encontre cest ordonnance ou aucun point contenue en^e icells.

Hereunto these Laws and Ordinance are likewise, as unto the antient Statutes of the Admiralty before mentioned, adjoined divers Articles, inquirable, presentable, and punishable in the Admiralty Court, many of which, as did the others, do plainly shew that the Admiral hath Jurisdiction upon the Ports and Havens. Some of them here I shall likewise set down.

It. soit enquis de tous petites, felonies, emblants en ports, ou sur la mer dedens nefz ou bateaux or ou argent ou de brusent coffres et emportant ce qui est dedens icelles ou emblest amrous ancras ou autres apperilz de nefz ou bateaux ou emblet ou coupent sur la mer Rees ou levant Taws.

^c Sup. cap. prox. præd.
ult. p. 64.

^d Ord. 16. pag. 63.

^e Ord.

Other Articles I find here as in the former, to enquire of such as found either Waifs, Flotson, Jetson, or Lagon, viz. either Ships, Vessels or Boats of any sort whatsoever upon the Seas or Sea-Ports, forsaken and lost by the owners, goods lost by Shipwreck, and found floating or swimming upon the top of the waters; goods cast out of a Ship being in danger of wreck, and beaten to the Shore by the waters, or cast on the Shore by the Mariners; or goods lying in the bottom of the Sea, or Port, there likewise left and lost by the owners, as ^f Iron, Gold, Silver, Anchors, &c. whereof the Admiral hath not had his share.

Here likewise (as of all the former) is contained that Article against Weres, Kidles, Blind-stake, Water-mills, &c. which do annoy the great Streams, and Channels of Havens or Ports, which followeth in these words :

Item ^g, soit enquis de tous ceulx qui foustinent sur ces gros streams et channels des Havens ou Ports, Weres, Kedylls, Blind-stakes, Water-milles ou autres instruments en aneantance des Ports per lesquels nefs ou bateau ont este periz ou homme mort.

Amongst these Articles also, one enquireth of such as have found any one dead upon the Sea, or in any Ports within the Jurisdiction of the Admiralty, and hath found upon him any Gold, Silver, Jewel, or any other Commodity of value, and hath not rendred it to the Admiral, or his Lieutenant, as a Deodand.

Item ^h, soit enquis de ceulx qui ont trouve sur aucun homme mort trouve sur la mer, ou en Ports dedens le Jurisdiction de Admiralte or, argent, ou autre Jovel, ou chose de value, et le n'au y rendu a l' Admiral

^f Art. 5, 6, 7. p. 67. ^g Art. 26. p. 67. ^h Art. 27. p. 68.

ou son Lieutenant comme dedant, car ce appartient a l'Admiral pour lame de homme mort.

By these ⁱ Articles are likewise to be enquired of the death of a man in any Ship, Vessel, or Boat, &c. And of the maim, shedding of blood, within the Jurisdiction of the Admiralty, and divers other such like matters, &c.

And so for ^k Ships, Barges and Ballengers arrested for the Voyages of the King or Admiral; and breach of the Arrests, and the like for Mariners.

By these Articles likewise are to be enquired of all such as do drag for Oysters, Muscles, &c. in unseasonable times, and such as do destroy the Fry ^l of Fish, and of such Mariners as do violence to the Owner of the Ships, contrary to the Laws of the Sea, and Statutes of Oleron; such Mariners as disobey the lawful commands of their Master; such Masters as keep not their Mariners in order and peace according to the Laws of Oleron, and likewise of ^m Loads-men and Loads-manage.

And here particularly is to be enquired of such as do claim propriety in any Port or Haven, which belongeth unto the King, without Charter, or Prescription to the disinherittance of the King.

Item, soit enquis se aucun clame properte en port ou commers qui attient a nostre seigneur le Roy et ne la my par chartre ou prescription en disherittance du Roy. And in this respect as well as others, is the Admiral called, *Custos portuum, et Custos maritimarum partium, &c.*

Here again, as by the former Articles, are Fore-stallers and Reqraters, as is before mentioned, to

ⁱ Art. 29. et 30. p. 68.

^k Art. 32, 33, et 34. pag. 69.

^l Art. 38, 39. pag. 70.

^m Art. 27, 28, 29. pag. 71, 72.

ⁿ Art. 48. pag. 72.

be enquired of ^p ; and so are Weights and Measures, and the abuses of water Officers ^q.

By another Article here are Fishermen to be enquired of, which take Salmones out of season in any Arm of the Sea, as *Thames, Trent, &c.* specifying some particular Arms of the Sea, and concluding withal in general, so that by Arms of the Sea in these Laws expressed, Ports and Havens must needs be meant ; the same things which *Sir Ed. Coke* under the same notion would have to be within the Bodies of Counties, and out of the Jurisdiction of the Admiralty ; which we see plainly did thereunto belong in far more antient times, than any of his proofs and authorities are of to the contrary ; and these are the words of the Article.

Item, soit enquis de poissonners que prennent saulmons hors de saison aux bras de mer, cestassavoir Thames, Trent, Deve, Derwent, Agre, Reme, Humbre, et autres rivieres q'l conq's ou destroient fry de saulmont en aucun temps de lau.

For any one to remove an ^s Anchor of any Ship or Vessel without warning given to the Master or some of his Company, by which means the Ship doth perish or any man is slain, or cut the Buoy from the Buoy-rope, so that the Anchor is lost, are offences against the Laws of *Oleron*, presentable before the Admiral or his Lieutenant, and punishable according to those Laws.

Here likewise is an Article agreeable with the former, amongst those adjoined unto the old Statutes concerning ^t Shipwrights wages.

Divers other Articles there be which concern other matters belonging to the Jurisdiction of the Admiralty, some of which might have been like-

^p Art. 41, 42. pag. 71. ^q Art. 49. et 54. pag. 73. ^r Art. 56. pag. 74. ^s Art. 60. et 61. pag. 75. ^t Art. 66. pag. 75.

wife deduced into proof for the Admiral's Jurisdiction upon the Ports; but I conceive these will be sufficient to convince any indifferent man that he had Jurisdiction there in *Edward* the Third's time, and by those that are adjoined to the antient Statutes of the Admiralty, and Introduction of the Laws of *Oleron*, it will appear that he had Jurisdiction there long before.

Unto these Articles are joined several Admonitions drawn unto several Articles, for the due observance of these Articles, and putting them^u in Execution.

And next unto them is set forth the manner of proceeding according to the Maritime Laws, both in causes Civil and Criminal.

^u Pag. 76.

C H A P. XIII.

That by the antient Statutes of Enquiry, translated out of French into Latin by Rowghton, the Admiral's Jurisdiction is upon the Ports and Havens, as well as over the high Seas.

WELWOODE in his Proeme to his Abridgment of the Sea Laws maketh mention of the Inquisition taken by eighteen most famous persons for skill in seafaring matters assembled at *Quinborough*, and the Articles there agreed on, out of which I have cited some in the foregoing chapter; and he saith, that *Thomas Roughton* afterwards turned them into *Latin*, and entitled them Articles *De officio Admiralitatis Angliæ*. But I do not find that

that the Articles which *Roughton* translated out of *French* into *Latin* were the Articles agreed on at *Quinborough*; for the Articles of *Quinborough* set not down the penalties upon the breach of every particular Article (but refer the punishment to the former antient Statutes and Articles of the Admiralty, and the Laws of *Oleron*) whereas those translated by *Roughton* do; besides at the Inquisition of *Quinborough*, there were by those exquisite skilful men in Maritime busineses both at home and abroad, several Sea Laws or Statutes agreed on, and by the King confirmed, which I find not translated by *Roughton*, where he averreth such his translation of Articles out of the *French* tongue into the *Latin*, and calleth them Statutes; in regard the penalty of all or most of them are therein determined and appointed, which his averment is in these words at the end thereof; *Hæc statuta fuerunt translata per me* ^a *Thomam Roughton à linguâ Gallicanâ in Latinam, signum meum manuale in testimonium ejusdem hic apponendo.* Now in this averment there is no mention of the Articles of *Quinborough*, besides those; and these agree not in method nor in number.

Nor are these the Translation of those antient Articles adjoined unto the antient Statutes of the Admiralty (which have the penalty upon the breach of every of them set down in them, as these have) for they have neither the same method nor the same division, these being divided into 50 Articles, those but into 38. Yet are not these Articles in any one particular contrariant or repugnant one unto another; but so agreeable in matter of substance, that that agreement amongst them may

^a I here contradict not *Welwood*. for *Roughton* might also translate the Statutes and Articles of *Quinborough* at some other time as well as these.

stand for a true confirmation, and a strong corroboration both of the justice, equity, and authority they carry along with them, and also of the credit that is to be given to them.

They all so agreeing (as I have said) these must needs prove the same thing that the others have done, namely, the Admiral's Jurisdiction to be upon the Ports and Havens. I shall set down some few of these in their own language, to shew this agreement, and so pass to a yet further proof of this particular.

But I shall first observe that as heretofore ^b I have shewed that the Admirals antiently have had, joined unto their Patents for that place whereof they were Admirals, a special Precept to all Sheriffs, Mayors, Bayliffs, Constables, Headboroughs, &c. commanding them to be obedient unto the Admiral and his Lieutenants, and to be aiding and assisting unto them when they should be thereunto required; so, by the front of these Articles or Statutes, the Admiral is directed to grant his Warrant to the Bayliffs of the Port (if it be a liberty) as well as to his Marshal for the summoning of a Jury to make enquiry (according to these Articles) of all such offences as are committed contrary thereunto; which Articles are there said to concern the Maritime Law; and these are the words of that direction.

Imprimis^c cum veneris ad portum per costeras maris, si sit in villâ quæ habet libertatem, fiat Warrantum Mariscallo Curie ac Ballivis libertatis quod venire faciant xxiv. probos et legales de vicineta illo, viz. Mercatores et Marinarios, et alios per quos rei veritas melius sciri poterit et inquiri, ad in-

^b Sup. lib. 1.

^c Articulorum fronte.



quirendam

quirendum in Curiâ Admiralli certis tida^d et loco tenenda per eorum sacramentum fideliter præstandum, quicquid eis constare poterit super certis articulis legem maritimam tangentibus, super quibus erant ad tunc onerati pariter et jurati.

And the penalties of the breach of Articles first mentioned are as these are, in case the party be convicted, and that by express words *fil est de ce convicte*, &c. as will appear by some of those I have before cited, and as will here appear by some of those I am about to cite, *si indictatus et convictus*.

Whence I gather that which will clearly overthrow the very foundation whereon many of Sir *Edward Coke's* arguments are grounded, *viz.* that where an inquiry may be made by Jury, there the Admiral hath no Jurisdiction, which we plainly see is not so.

The first of these Articles with a *nota*, is the same with that which precedeth the first mentioned Articles, which is against such as shall discover the King's Counsel, or his Fellow-Jurats; and the penalty is the same here with that there, which is a very terrible punishment (but I am not about to set forth what the penalty or punishment of the breach of every Article is.) It is enough for my purpose, that the Articles do some of them plainly shew that the Admiralty Jurisdiction is not limited to the high Seas, as Sir *Edward Coke* would have it, and that by this first Article as well as by many more: For certainly whether a Jurate doth disclose the King's counsel, or his Fellows either at Sea or Land, or upon Port or Haven in these Ma-

^d Certis tida et loco; nota, that the tide is observed by ebbing and flowing upon the Ports and Havens, and not upon the high sea.

ritime matters, it is inquirable in the Admiralty Court, and there punishable; for it is a ridiculous thing to set a penalty or punishment different from all punishments of the Common Law (as this is) upon any offence, and not to have power to inflict it upon the party so offending, unless he go to the sea to disclose and discover that which he hath already done, or might have done at land. And this likewise will check the opinion of those that hold that whatsoever is done at land, howsoever it concern Maritime affairs, is cognoscible at the Common Law, and not in the Admiralty: but of that in its due place. I shall here only set down (as I said before) some few of those Articles, which shew the Admiralty Jurisdiction to be upon the Ports, and are agreeable with the former which I have before mentioned.

The sixth Article doth enquire of such as have taken up any Weife, Jetson, Flotson, or Lagon out of the Sea, or any great River, and have not satisfied the Admiral for his share. This is punishable though it were Weife, Jetson, Flotson, or Lagon in any great River or Port. The words of the Article are these:

Inquiratur si quis reperit super mare sive in grossis rivis, naves, ferrum, plumbum, seu aliqua alia bona fluctuantia, vel in profundo jacentia, quorum nemo est possessor, quæ vulgariter appellantur Flotteson, Jetteson, Lagon, et Domino Admirallo non satisfecit pro parte, Dominum Admirallum contingente, viz. de medietate; qui secus fecerit, si super hoc indictatus et convictus fuerit, &c. partem suam amittit nichilominus cum Admirallo secundum discretionem suam finem in hac parte faciendo ad valentiam bonorum^f inventorum.

^f Roughton, Art. 6. et 28.

The seventh Article inquireth of Mills, Kiddles, or other things in the Sea or great Rivers, hurtfull to Ships or Navigation, and how the causers of them are to be punished : The Article runneth thus :

Inquiratur ^g si quis in grossis rivis levavit molendina, Kydel, seu aliqua alia instrumenta quæ navigantibus seu navibus Communiter sunt nociva. Quod si de hujusmodi molendinis, Kydellis, aut instrumentis, in nocumentum ut præfertur scituatis, domino Admirallo per inquisitionem conskiterit, extrahi debeant penitus, et destrui transgressores, qui in hoc casu super hoc finem cum domino Admirallo facturi sunt.

The tenth Article is against such as being arrested to serve the King, break the Arrest, who surely are both arrested, and do break the Arrest either at land or upon the Port, and not upon the high Seas, and how such are to be punished. Which the Article sheweth thus :

Inquiratur ^h si arrestatus ad serviend. Regi fregit arrestum, hujusmodi transgressor stat in gratiâ regiâ sive Admiralli sui utrum voluerint committere Carceribus mancipandum vel finem facere, in hac parte, si arrestum hujusmodi factum manifestum fuerit cognitum.

The twelfth Article is against such as do take Oysters and Muscles in prohibited times of the year, and such as do at any time of the year fish with Nets of too narrow a mesh in great Rivers, and destroy small Salmons, and other fry of Fish, who are to be punished as this Article sheweth :

Inquiratur ⁱ de his qui capiunt ostria seu musculos inter primum diem Maii, et Festum exaltationis Sanctæ Crucis, et etiam de his qui quocunque tempore anni per retia nimis stricta in grossis rivis destruunt

^g Roughton, Art. 7. ^h Roughton, Art. 10. ⁱ Roughton. Art. 12.

falmunculos, seu alios pisces nimis juvenes; omnes isti in hac parte indictati sive officio Admiralli detecti, sive aequaliter accusati, finem facient secundum discretionem Admiralli, etc.

The fourteenth Article doth most manifestly shew the Admiral's Jurisdiction upon the Ports and Havens; for it setteth forth the punishment of such as do hinder or resist the Admiral or his Lieutenant, freely to determine, decide, correct, and put in execution all transgressions, batteries, felonies, and other causes whatsoever happening upon the Sea, or upon whatsoever Rivers, Waters, or Rivulets of the Sea unto the first Bridge, according to the Custom and Law Maritime, in these words:

Inquiratur^k de his qui impediunt, vel resistunt domino Admirallo, seu ejus locum tenenti, batterias, felonias, et alias causas quascunque super mare et infra quoscunque rivos, aquas, sive riviculos maris usque ad primum pontem emergentes, terminare, decidere, corrigere et executioni demandare libere possunt, quia omnes isti sunt rebelles, et tanquam rebelles sunt puniendi.

The sixteenth Article is against forestallers in Ports and Havens, and setteth the penalty and punishment of such offenders, and in what case such shall be freed: Thus,

Inquiratur^l de his, qui ingressu portus, vel infra portum forinstallant et emunt victualia in grosso, ad damnum comitatus vicinum, indictatus super hoc et convictus, etc. imprisonamentum, dimidii anni habebit, præterea finem faciet domino Admirallo ad valentiam bonorum hujusmodi. Si tamen naves cum hujusmodi merchandizis sive victualibus vento contrario reluctante impeditæ, ventum expectent faven-

^k Roughton, Art. 14.

^l Roughton, Art. 16.

tem, emptores hujusmodi rerum sive victualium ab omni impeditone in hac parte erunt immunes, et nichil domino Regi, aut Admirallo perdent, nec amittent.

Many Articles more there are which do enquire of offences committed, and punishments proper for them, which are such penalties and punishments as are not used at the Common Law ; I shall but only name the chiefest of them.

There be Articles against.

Stealing ^m, cutting off, or carrying away the buoys fixed to an Anchor, whereby the Ship doth perish, or is made worse, which is punished by the Law of the Sea with a punishment different from that of the Common Law.

Against ⁿ Carpenters and other Artificers employed about making or repairing of Ships, for taking excessive wages.

Against such as cast ^o Sand, Ballast, or any other thing into the Channel of a Port or Haven.

Against a ^p Loadsmen that undertaketh to bring a Ship safe through the Haven to the Key or place of discharge, and through his ignorance, idleness, negligence, or other fault suffereth the Ship or Merchandises to perish, the punishment is such as is not used at the Common Law.

Against such as that ^q strike, wound, draw blood, make any fray, or kill any man within the Jurisdiction of the Admiralty, they are to be punished according to the quantity and quality of the offence.

Against ^r Regraters, such as use false weights, and false measures in their Ships for buying and selling by in the Ports and Havens.

^m Roughton, Art. 10. ⁿ Roughton, Art. 22. ^o Roughton, Art. 24. ^p Roughton, Art. 26. ^q Roughton, Art. 27. et 28. ^r Roughton, Art. 29, 30, et 31.

Against such as take ^s extraordinary Portage in any Haven, and the Article setteth down what Portage is to be paid by Ships of such a burden, &c.

Against ^t Port keepers and Water-bailiffs that raise new Customs and excessive Fees within the Port or Haven, &c.

Against ^u Ships and Men appointed to serve the King, and avoid the service.

Against such as shall cut any ^x Cables, &c.

Against ^y Felonies done in Foreigners Ships, and other Ships upon the Sea-ports and Havens, and against such as shall remove any Anchor.

Against ^z notorious Malefactors, either upon the Sea or Port.

Against ^a such as have taken and concealed any Deodand upon the Sea, Port, or Haven.

To conclude, the Admiralty is so far from being limited to the cognizance of things done upon the high Seas, that it is not so much as limited to things done upon Sea and Sea-Ports, but the power and authority thereof is, and of ancient times hath been extended to all such things as do belong unto the Seas, Ports, Havens, and Salt-waters, as will appear by the 34th Article, which is this.

Item ^b inquiratur de his qui colligunt in fossat. aquam salsum, et faciunt sibi piscarias, scituantes et de novo facientes et incipientes gurgites, aut alia sibi necessaria immobilia, percipientes exitus et proficua eorundem ad eorum opus proprium et quæ in aquâ salâ omnibus debent esse communia, pæna si indictati

^t Roughton, Art. 35. ^t Roughton, Art. 36. ^u Roughton, Art. 37. 39. ^x Roughton, Art. 40. ^y Roughton, Art. 42, 43. 44. ^z Roughton, Art. 45. ^a Roughton, Art. 49. ^b Roughton, Art. 34.

fuexint vel impetiti, pœnam ordinationis Regis Johannis apud Hastings subituri sunt, &c.

And this Article further sheweth, that such things as these which concern or belong to Ports or Havens, did in King *John's* time belong to the Cognizance of the Admiralty.

And now I shall proceed unto such proofs as I have gathered from the Civil Law, in confirmation of what I have gathered from other Antiquity : But I must first shew that that Law is used and practised in other Nations, being a thing by some strongly denied.

C H A P. XIV.

That the Civil Law is used and practised in all or most Nations of Christendom.

I Have heard (but am unwilling to believe it) that some have strangely dreamt, and as strangely fancied that dream to be true, that the Civil Law is not received, nor of any use at all in foreign Nations, but the same hath been 1200 years since abolished : but I doubt not but that when their judgments are awaked, and better informed, they will find the same to be but a dream, and will easily be persuaded not to persist in such an error unreformed, which I will more willingly term to be but a mistake, for that the same may in part be understood to be true, and the other part from thence miscollected ; for the City of *Rome* was no sooner built than it had Civil Laws, and *Sanctiones* ordained, constituted, and appointed for the government thereof, which in many hundred years were, and in many more several Emperor's Reigns, by

by them altered, augmented, and increased, which were by wars and turmoils about the time before mentioned (and long before *Justinian's* reduction of them into method and order, and compiling them into a body) much distracted and perplexed, or rather laid aside, and as it were, destroyed and lost, which makes *Justinian* himself, in his Edict of confirmation of his digests, say, *Post bella* ^a *Parthica æterna pace sopita, postque Vandalicam gentem ereptam et Carthaginem, imo magis omnem Libyam Romano Imperio iterum sociatam, et leges antiquas jam senio prægravatas per nostram vigilantiam præbuit in novam pulchritudinem et moderatum pervenire compendium: So that it seemeth these old Civil Laws with their age and perplexities of wars, which do silence Laws, were *prægravatæ*, even suppressed, or crushed down, which some perhaps may term an utter abolition, and not without cause, when as *Justinian* himself in the same place, speaking of this reduction of them, *Quod nemo antea hoc superavit* ^b *neque humano ingenio possibile esse penitus existimavit*; that no man (before he saw it done) did ever hope for, or human reason seriously think it possible: For that it was marvellous that the *Roman* Law, which began with the City it self, which had by the intestine wars there for almost fourteen hundred years been staggered, and shaken, and that extending unto the Imperial constitution, they could be reduced unto one consonancy or agreement. *Erat enim mirabile Romanam sanctionem* ^c *ab urbe conditâ usque ad nostri imperii tempora, quæ pene in mille et quadringentos annos concurrunt intestinis præliis vacillantem, hocque, et in imperiales constitutiones extendentem, in unam reducere consonantiam.**

^a Justin. in confirm. F. in prin. ^b Idem, ibid. ^c Idem, ibid.

And from this suppression, or laying aside of these ancient *Roman* Laws, some, it seemeth, have miscollected, and unduly concluded, that the same hath never since been received or made use of in any foreign Nation at all.

But this new moulding, reducing, and with so much pains, labour, and care, digesting of those ancient Laws into method, form, and order, and compiling them into a body, plainly sheweth the contrary, unless we will believe all this was done to no purpose.

And if it shall be said that these Laws thus digested, and brought into form and method, have since such their reduction (which was after the time of the twelve hundred years before mentioned for their being abolished) been again suppressed, born down, or abolished, and not received in any foreign Nation to this day: What shall we say of the printing and so often reprinting of this large body of the Law, since printing was first invented, which was but 190 odd years agoe? Next what shall we say of the so late reprinting this large body with the gloss and case, and other notes upon the same, with the large Index thereunto, in all consisting of six large Volumes in folio, some printed in one Country, and some in another; some printed within these thirty years, some within a shorter time?

Or what shall we say of the several Authors of most, if not of all the several Nations of Christendom, which have in all the several Centuries of years since the compiling of this body, even unto this time, wrote and commented upon the same, some on one part, some on another; and of all those other Authors of all or most several Nations, which have wrote several Tractates of Decisions and other Law-books, which do ground and raise
their

their authority from this body of the Law, and quote the same for proof of whatsoever they determine?

Shall we say that all this from time to time continued study, industry, labour and pains hath been taken, and all this cost, charge, and vast expence laid out to no end, for no use or purpose? or shall we say all this is done only to mock the world? Certainly he that shall say either, will but mock himself, and such as will believe him; but he can never deceive any one that hath but once seen the inside of a Civilian's study, either at home or abroad; for both are the same, and furnished with books of the same nature and kind; and all Lawyers or practisers in the Laws, in all parts of Christendom are Civilians, and do study and take their degrees in the Civil Law, as the Civilians do here, and do proceed in all causes for the most part according to the course and directions set down in the Civil Law, and are regulated and guided in all their determinations and judgments by that Law, saving that in several Nations they have several municipal Laws, Acts, or Edicts published, and declared amongst themselves for the regulating their own particular Government, which are binding unto no others, nor observable in any other Nation than that wherein they were constituted and ordained, and that in land businesses, and not in maritime and sea affairs, wherein several Nations by reason of their Trade and Traffick each with other, are concerned, and must have their differences which happen between them determined by one and the same Law, which is principally the Civil Law, though some other Maritime Laws, which receive their ground and foundation from the same, are therewith practised; by which all
diffe-

differences likewise happening and arising between Nation and Nation, are to be regulated and determined, it being now generally received as the Law of Nations, although at the time of its being compiled into a body, *Justinian* himself distinguished it both from that Law of Nations, and from the Law of Nature. And for other municipal Laws, one Nation will not subject itself unto a municipal Law framed and constituted by another, they being in some sort different each from other, though both derived from one and the same principal Law, and are neither so many as the Statute Laws of this Land, nor so much different from the Civil Law itself as our Statute Laws are from our ancient fundamental Common Laws : For indeed the body of the Civil Law being so ample, large, perfect, and compleat in itself, for decision of all controversies of what nature soever, arising between persons of what quality or condition soever ; the several municipal Laws of those several Countries, are only some ways confirmatory or explanatory thereof ; or sometimes extending, or sometimes limiting the same ; but seldom or never contrariant or repugnant thereto, or much differing therefrom, unless it be in the manner of punishment, or the like ; and sometimes, and in some places they are no other than the very same abbreviated or shortned, and made in affirmance of them, and have their ground from them, as some of our Statutes here have from the Common Law. Nay, those very proceedings, and determinations of Controversies in the Parliament of *France* (which many have thought most to differ from the proceedings and determinations of the Civil Law) are notwithstanding plainly agreeable thereunto, and grounded thereon ; nay, the very Name, Constitution,

tution, and Authority thereof, are all derived from the Civil Law, as doth plainly appear by that which *Johannes Montanus* concerning the Authority of that great Council, hath wrote, as likewise by the additions made thereunto by *Boerius* that Countryman, not much above a hundred years since, where it appeareth that the very name *Parliament*, whereby this great Council is called, is derived from the Civil Law; *Bartol*^d an ancient Commentator upon that Law being there cited, upon three several places thereof, for having or using the word *Parliamentum* in the same sense the same is used in *France*, and where likewise diverse other Civil Law Authors are cited to the same purpose^e.

And *Bartol* is likewise cited for that he alloweth no Prince to hold a Parliament, that acknowledgeth a Superior. *Princeps^f non potest habere Parliamentum, si superiorem recognoscat.* And likewise *Boerius* proceedeth to the setting forth the use of this Parliament, namely for the profit of the people, *ubi^g super aliquo oportet provideri pro utilitate totius provinciae, praeses debet facere congregare generale concilium seu Parliamentum, ut super dubio proposito, sanum et utile concilium exhibeatur.* And it is there compared to the *Roman* assembly, much mentioned in the Civil Laws^h. *Et Parliamentum potest dici cætus, cujus nomen tractatum est ex more Romano,* taking rise and example from that glorious Assembly of the Palace of *Rome*, mentioned in the Code of the Civil Law. ⁱ *Id ab omnibus antea proceribus nostri palatii quam gloriosissimo cætu nostro, &c.*

^d Boer. de Autoritate Parl. Gal. n. 165. ^e Id. eod. leco.
^f Bart. l. 2. 6. dedec. l. 10. ^g Boer. eod. lo. ^h Id. ibid. ⁱ L. humanis Cod. de lege.

It is likewise called the Parliament of *Paris*, and it is there said to be called ^k *Parliamentum Parisiense*, quasi *Parium lamentum*, quia *Pares Franciæ*, qui sunt de numero ipsius, querelas et planctus audiunt, de quo mentionem facit Paul. de ^l *Castr. in Consil. 334. vol. antiq.*

And it is there likewise said to be called *Curia suprema*; ^m or *curia judicum maximorum juxta Authen. de Consulibus Sect. si autem mediocre, et tunc dicitur curia*, secundum eum, id est cura vel cultura juris; so that it is said to be the very sollicitude, care, or study of the Civil Law; or the very tilling, dressing, or trimming thereof.

And this great Court, at first constituted by King *Pipin*, consisted ex quatuor ⁿ viginti consiliariis computatis præsidentibus eisd. et per conclavia, (quæ *Cameras appellant*) distributis. And after other additions made thereunto by *Charles the Great*, Son of the said King *Pipin*; Adjuncti præterea fuerunt prædicto corpori octo magistri requestarum, domus regiæ, ut sic centenarum judicum numerum tenens, illius senatus effigiem haberet quem *Romulus Romanorum regum primarius*, ut reipublicæ consuleret, creavit.

There were furthermore adjoined unto this body eight Masters of Requests of the King's House, that, keeping the number of an hundred Judges, it might have the Effigies or Form of that Senate *Romulus* the first King of the *Romans* constituted to counsel the Commonwealth.

Nay, the dignity, the precedency, and placing of the Counsellors of this great Council, is derived from the authority of the Civil Law, as is plainly

^k Boer. eod. lo. n. 166. ^l Paul. de Castr. Consil. 334. vol. antiq. ^m Id. Boer. n. eod. ⁿ Id. Ibid. num. 171.

set forth in the said *Montanus* upon the Authority of the Parliament of *France*, and *Boerius* his additions thereon, who both quote the Civil Law for the same; and so is likewise the very authority of the Counsel from thence derived, as by the said Authors doth likewise appear. And shall we now say that this great Court or Council, and the very order and authority thereof was thus framed and constituted by the rules and directions of the Civil Law, and say, conceive, or think, that their judgments and determinations of Controversies, &c. there given and made, are not according and agreeable to the same Law?

If I should here endeavour to set forth those several Authors and Writers upon the Civil Law, which have, as I said before, in the several Nations of Christendom, in all the several Ages and Centuries of years which have been ever since the Compiling that Body, even unto this time, written and commented thereon, and those which have wrote the Decisions, Determinations, Judgments, Objections, and other Law-books grounded upon the same, and which cite them for their authority and proof of what they conclude, I should extend this Chapter to a whole Book or Volume, and but shew the Civilian, and such as have been vers'd in Law Libraries, what they have seen already, and but tell others of those things which they will neither search for, nor endeavour to see: And I am afraid I have too far already deviated from my intended port of discharge of the discourse I in this book entred upon; which was to prove the Ports and Havens of the Sea to be within the Jurisdiction of the Admiralty; but before I can return to steer a right course thither, it will be necessary, first to shew that the Civil Law is likewise necessarily practised,

practised, used and exercised in all Admiralty Courts, and there binding, and of authority to direct the Determinations, Sentences, and Judgments decisory in Maritime and Sea-affairs, between party and party, be they foreigners or others ; and then to shew that by those Laws so exercised and practised in those Courts, as well as by the other Laws already set forth, it doth appear that the Ports and Havens, and all things done thereon are within the Jurisdiction of the Admiralty.

C H A P. XV.

That the Traffick and Sea-trading is different from the bargaining and trading at land ; and that therefore in all foreign Nations they have their distinct Judicatories guided by distinct Laws, and that though the Judicatories for land affairs have in divers Nations divers Municipal Laws mixed with the Civil Law, yet the Civil Law is strictly used and practised in all Admiralty Courts, and is absolutely necessary in the decision of all Maritime and Sea differences.

SUCH as were apt to believe that the Civil Law was, and is abolished in all foreign Parts, and no use made thereof, in the rule and governance of land affairs, would very hardly (without the removal of that misapprehension) have been persuaded that the same was of any use in their Admiralty Courts in sea businesses.

I must therefore in the next place shew that he which understandeth only the *Rhodian* Laws, the
Laws

Laws of Oleron, and the Inquisitions and Statutes before mentioned (which the Civilian must needs most perfectly do, the first being a great part thereof inserted in the very body of the Civil Law, and the other from thence derived) cannot without much reading and knowledge in other parts of that Law, be sufficiently able to manage the pleadings and arguing of all Maritime Causes arising in Admiralty Courts between party and party, and between the supreme Authority, and those that are employed by that authority, and such as are in subjection to the same, much less to judge and determine such causes therein according to law and justice.

For justice which ruleth and swayeth the secular Regimen or Government of all or most Kingdoms and Commonwealths of Christendom, whereby men are made happy in possessing and enjoying their own, and defending themselves against wrongs and injuries offered by others, hath two wings, *duas volatiles habet alas*. She hath two wings wherewith she soars aloft, and stretcheth herself unto, and spreadeth herself over both sea and land. She hath two Jurisdictions, the one fitted with Laws most apt and proper for distributing of right in all land businesses; the other furnished with Laws most meet and convenient for the dispensing of equity in all maritime and sea affairs; and yet how different and distinct soever these two Jurisdictions are each from other (as I have set forth more at large in the ^a first chapter of this second Book) yet do both these wings of justice in all foreign Nations, spring and proceed from one and the same body of the Civil Law, and are from thence furnished and fitted with different and dis-

^a Sup. lib. 2, cap. 1.

distinct Laws, whereby they keep up, and carry justice upright between them both; and by the one extendeth her directions unto the business of the land, and by the other reacheth forth her proceed and effects unto the affairs of the sea.

Which two wings, if taken off, Justice must needs fall flat to the ground, and can by no other means so expand herself, as to extend either her directions unto the one, or reach forth such her effects unto the other; *Secundis alitibus procedere nequit*, she cannot go on prosperously or happily to execute or perform her own proper office, either upon the one or upon the other.

Nay, if either of these two wings should be taken off, or but jointed, implumed, or bereaved of those feathers nature at first gave it, though the other should be preserved, and kept never so complete and perfect, yet could Justice by the perfection of that one wing, but hover and heave herself upwards on one side, whilst the defect in the other would pull her downwards; and the one side falling to the ground, the other must necessarily follow.

If the power and privileges of either of these Jurisdictions should be decayed or but impaired, though the other should be left never so entire, yet could not the effects of Justice in the one supply the defects in the other: For the Laws of the Land are no more fit to regulate the Affairs of the Sea, nor the Laws of the Sea any more apt to rule the business of the Land than a horse is fit for a Sea Voyage, or a ship for a land Journey.

And then cannot Justice be said to be herself, whilst she shall do right in one thing and wrong in another; or whilst she should render that which is just in one matter when it is required, and can afford no help at all in another when it is expected.

Justice

Justice saith Cicero, *est habitus animi (communis utilitate servata) suum cuique tribuens*; Justice doth every man right, still preserving the common good.

I will not here say how slowly Justice hath oftentimes put right forwards, and as it were but soared in a circle, by one wing's striving to out-fly the other:

But here I will say, that he that will make most haste to his journey's end, and setteth his best leg forward, if that leg shall not cease to kick the other for making no more haste, or shall by that or such other means lame it, because itself would get both the credit and profit of the journey, that leg must necessarily but hop instead of running, or walking, and cannot come so soon to it's journey's end, if ever it come there.

And one leg being lamed, if the crutch that should supply it, be applied unto the other that is not lame, the body will walk no whit the better; and if one wing be pluck'd, and those Feathers imp'd into, or added unto the other, the Bird will fly no whit the faster.

If one of these two Jurisdictions (the two wings which Justice hath to support herself) should be bereaved of its power and proper privileges, tho' the same should be taken and assumed unto the other which enjoyeth all its own before, Justice could proceed no whit more duly, but much more prejudicially to some or other. For, as I said before, the Laws of the Sea are so different from the Laws of the Land, that they will not serve to each other's purpose.

And indeed they must necessarily so be; for the traffick and commerce in Maritime affairs by transportation at Sea, is in its own nature as different from the trade of bargaining and chaffering in

Land busineses as is the fluid element of water from the solid element of earth : For as the water doth admit of some mixture of the earth, and yet still remaineth water ; and the earth doth admit of some mixture of water, and yet remaineth earth, though not in their absolute purity, yet in such sort, as that the one may properly enough be termed water, and the other earth.

In like manner doth the trafficking and commerce in Merchandizing Affairs, admit in some sort of the like covenanting and contracting as the land Trade and bargaining doth ; but yet remaineth a seafaring Traffick and Commerce, and the Land-Trade and bargaining doth likewise in some sort admit of the like bartering and exchanging of goods and commodities, as the Traffick and Commerce in Merchandizing affairs doth, but yet remaineth a land bargain.

In the same manner do the Laws which regulate the one, and the Laws which rule and dispose the other, admit of some mixture each with other, both in respect of their manner of proceedings to judgment, and sometimes in regard of their concurrency in the judgment it self, where the nature of the causes differs not ; and yet the one remaineth the Maritime Law or Law of the Sea, and the other the Law of the Land.

Now if of these two different Elements of Water and Earth, (whereunto I have resembled the difference between the Traffick and Commerce in Merchandizing Affairs by Sea, and the Laws thereunto belonging, and the Land-Trade and Laws which concern the same) there should be such an equal mixture, that the same could neither be said to be water nor earth, but a mix'd body equally composed of both, then would the same be fit for neither man nor beast to walk or tread

on,

on, nor Ship or other Vessel to float or sail on. In like manner if these Laws purposely composed for the decision of Maritime Controversies, and the Laws established for determination of land differences should be promiscuously applied to the decision, or used for the determination of both, and by that means such a mixture thereof made, that the same could neither be termed the Laws of the Sea nor the Laws of the Land, then would the same neither serve for the Government of the one nor the other. For although the seafaring Commerce and Land-Trade have some resemblance (as I have said) in respect of the like contracting and bartering; yet are the Goods and Wares so bartered and contracted for, by way of Merchandizing of various sorts, and the lading and stowing of them in Ships done, or to be done, after many various manners and ways according to the nature of them, and many differences there are in the manner of the Master of the Ship or Skipper's acceptance of them, according to the condition and quality of the Goods so received and acknowledged by his Bills of lading, and several are the consignments made of them, the same being sometimes laden by Factors, and consigned to their principals for their own proper use and accompt: Sometimes for the accompt of their correspondents, &c.

And likewise much variety and difference is there in hiring and taking of Ships and Vessels to freight for the transportation of such Goods, Wares, and Merchandizes; the Merchants having sometimes Ships and Vessels of their own, which they sometimes freight wholly themselves, sometimes jointly with others: Sometimes the Merchant hireth or taketh a Ship or Vessel to freight which hath sometimes but one, sometimes many owners: Sometimes he taketh her to freight of

P. 3

the owner, sometimes of the Master appointed over her by the owners : Sometimes he hireth her by the Month, sometimes for a whole voyage ; which voyage is sometimes from one Port unto another, from that to a second, and so to a third, &c. And sometimes the Ship maketh no Port, but is lost, or perished, sometimes in the high Sea, sometimes in the Port or Haven out of which she is to set sail, sometime in the Port or Haven of her discharge : Sometimes she maketh one Port, sometimes two, sometimes more, and yet is cast away before she come to her last Port of discharge ; sometimes in the same.

Sometimes such Goods and Merchandises are damnified through the wastfulness of the Master, sometimes of the Mariners, sometimes through their carelesness in stowage of them, sometimes by reason of ill packing or making them up, or putting such as are liquid in ill or leaky Casks, &c.

Sometimes they are damnified by storm or tempest, or stress of weather, which is sometimes such as that the Master is constrained to cast over-board divers of the Goods for preservation of the rest, and saving both ship and mens lives, and sometimes he is constrained to cut down the masts of his Ship, as hath been^b said before, in this Second Book. Sometimes they are damnified in the lading of them, sometimes in the unlading of them, sometimes in the Ship, sometimes in the Lighter, &c. Sometimes they are damnified by one Ship or Vessel falling foul on another, and that sometimes by the negligence or carelesness of the Master or Mariners of either of them, sometimes of both, sometimes of neither, but through the extremity of the weather, or through the darkness of the season, happening either by mist, or night,

^b Supra l. 2.

Et c. which could not be helped or prevented by either the care or diligence of the Masters or their Mariners: Sometimes the Ship by such means is damnified only, and not the Goods: Sometimes the Goods and not the Ship: Sometimes both Ship and Goods: Sometimes the like falleth out for want of a Pilot: Sometimes through the ignorance and unskilfulness of such Pilot, &c.

I might here instance in very many more particulars, wherein this Commerce which consisteth in shipping and merchandizing voyages and affairs, doth differ from other trades used and occupied in land business, those being far more perilous and dangerous than these, and being likewise far more subject to depredations, Piratical Robberies and Spoils than these.

All which differences must needs introduce a Law, for the regulating the various and divers controversies that must needs arise by reason thereof, far different and distinct from that Law, which ruleth and guideth the determinations of such controversies and debates which happen in land businesses, not subject to such or the like casualties, dangers, and damages arising from so divers, various and different causes, all which do alter the very Judgments and determinations according to their different qualities, respects and conditions, which Law (as I have said before) for the community of Traffick and Commerce, and holding correspondency therein, and obtaining the same Justice by each Nation from other, must continue certain and unalterable, whenas the other may suffer alterations, additions, or diminutions.

It remaineth therefore here to shew, that besides the Laws of Oleron, &c. and the Title *ad legem Rhodiam de jactu* before mentioned, which is inserted in the Body of the Civil Law, that

there are several other Titles and Laws incorporated in the same Body proper and peculiar for the Decision and Determination of Maritime controversies, which are not at all exercised or used in the Decision of the differences in land businesses, nor any ways proper for them, although many of the other Titles and Laws which are for land businesses are made use of in the proceedings, and sometimes in the determinations of Maritime causes, and that neither those general Laws which serve for both, nor these particular Laws which serve for Marine causes only, are either abolished, taken from, or disused in the Admiralty Courts in foreign parts, but that the same are of most especial use in the same.

For proof hereof, I might cite the Disputations, Decisions, Determinations and Judgments of divers and very many, if not of all and all manner of causes, set forth in several Authors, of several Nations, in several ages and times, even to this present age, which are all grounded upon the same Laws, and do cite and quote the same for their foundation, and proof of what they conclude and determine, as I have said before. But no man can conceive that this Collection of so many Causes out of so many several Volumes, could be contained in one so small as I intended this. And some (and those not a few) would think it a vain and needless work to jumble so many Authors together, to no other purpose than to confute so plain an error, as no man that hath been at all versed in the proceedings of foreign judicatures, can be induced to believe.

I shall therefore instance only in some few particular Writers of these later times of most common use, and most generally known. I shall step no further back then unto *Peckius*, sometime Principal

pal of the Juridical Order in the University of Lo-
 -vain in France, who collected and gathered toge-
 -gether several titles, by him pick'd out of the body
 of the Civil Law, which principally belonged unto
 Maritime affairs, and wrote a Comment upon the
 same, which was there printed in the year of our
 Lord God 1556, above a hundred years since, for
 the use of such as were employed in the Judicature
 or Practice in the Law in Admiralty Courts con-
 -cerning Marine businesses; in which Commentary
 he doth not only cite divers other Civil Law Au-
 -thors, but likewise enforceth, extendeth and limit-
 -eth the understanding and construction that is to
 be made of the several Laws comprehended under
 those several titles, by other particular Laws set
 forth under several other titles, within the very
 body of the Civil Law, as necessarily he must do,
 having not taken in all those titles which concern
 the business, as himself confesseth in the very title
 of his Book, which he saith is *Commentaria in om-
 nes penè Juris Civilis titulos ad rem nauticam perti-
 nentes*; a Commentary upon almost all the Titles
 of the Civil Law, which concern Maritime Af-
 fairs. But indeed they are not near all, if we con-
 sider the divers particular Laws which concern the
 same, and are intermix'd with other Laws under
 other titles, and some titles he meddleth not with,
 which wholly concern such matters, and nothing
 else; nor doth he at all treat upon any other Laws
 which concern such affairs, and are made use of
 in all Admiralty Courts, together with the Civil
 Law.

Wherefore *Vinius* a learned Civilian of the Low
 Countries made an additional Commentary upon
 the same titles of the Civil Law, and upon the
 Commentary of the said *Peckius*, and set forth the
 same, which was printed at *Leyden* in *Holland*, in
 the

the year of our Lord God, one thousand six hundred forty seven, wherein he undertaketh not only to explicate and unfold those titles of the Civil Law which principally concern Maritime affairs, as *Peckius* had done before, but also to adjoin thereunto the Laws of *Wysbaith*, the Laws of *Oleron*, the Laws set forth in the Book *de Consulatu maris*; and likewise the Maritime Law of the *Rhodes*, *Jus navale Rhodiorum quod ad finem tomi secundi Juris Græco-Romano relatum est a Marquardo Trahero, V. Cl.* as he himself saith, that his said Work might be useful to all Nations in their Judgments and Determinations in all manner of Controversies, and therefore saith thus; *Cum in animo haberem locos juris nostri, qui ad rem nauticam pertinent, non explicare tantum, verum etiam cum generis ejusdem institutis et moribus aliorum populorum conferre, atque ad usum quendam accommodare communem, etc.*

Now although that for the due administration of Justice in Admiralty Court, the learning in, and knowledge of the Laws in these last mentioned Books be very requisite, that the same justice which one Nation affordeth to another, may be by that other render'd unto that Nation again, and it obtain the same; yet is the learning and knowledge of the Civil Law, which guideth and directeth both the Proceedings and Judgments in all Admiralties of *Europe*, as necessary, and far more requisite for him that will justify to any other Nation or learned Civilian his due and legal Proceedings, and justify his Judgments and Determinations in Maritime causes, though according to the Laws before mentioned. For *Vinius* himself in his Epistle Dedicatory to the Consuls of *Amsterdam* to his said Work prefixed, (who I doubt not but, in regard that which he then said in the behalf of the

the Civil Law, he said not to any that I now write, will be believed before me, that may be thought to speak for my profession in mine own Country) affirmeth that *Peckius* in his work intended to keep himself within the rules of the Civil or Roman Law; yet he did by that work shew that he wanted not the perfection of Learning, or solid and sound knowledge of Law, and many other things. *Ac fortasse Peckius intra limites Juris Romani se continere voluit; utcunque sit, ostendit sane hoc in opere Peckius sibi non defuisse justam eruditionem; solidamque; juris et multarum rerum scientiam.* And this I will further add, that he that in the Civil Law only (and without the learning and knowledge which other Authors afford) hath *justam eruditionem*, a just, perfect, or grounded learning, or skill; and thereby this *solidam juris et multarum rerum scientiam*, this solid and sound knowledge of the Law, and multiplicity of business, or matters, for which the same was composed and continued, may be fit to judge and determine of these Maritime matters and controversies which happen concerning the same, whenas he which hath the learning and knowledge of these other authors only, and hath no perfection in the learning and knowledge of the Civil Law, shall be very defective in the proceedings to the due or just judgment therein: But herein I shall plainly agree with this my learned Author *Vinius*, that these Authors are of very good use, and may conduce much to the perfection of him that is either to judge or determine of such Controversies, or shall be practisant in the same; and likewise in that he further addeth in the same place, *viz.* that notwithstanding the most perfect knowledge and learning in the Civil Laws, and these other Maritime Laws, it is sometimes, and

in some things requisite to make use of, and consult with such Merchants and Mariners, as are expert and skillful in Navigation and Commerce. *Equidem inficior in negotiis nauticis nonnunquam confugiendum esse ad expertes, sive nautas, sive Mercatores, aliosve hujusmodi peritos.* Yet this is by no means used, or ought to be done, but where some such thing falleth out, whereof there is nothing certain set down in the written Law, or introduced by Custom, so that I with my same Author affirm the same with that learned Civilian *Benvenutus Straccha*, in these words; *Cæterum nego id fieri solere aut debere, nisi (ut rectè monet prudentissimus Straccha) tale quid occurrat, de quo nihil certi aut scripto jure cautum, aut consuetudine introductum est.*

Now seeing that these Marine controversies and differences are to be adjudged and determined by these Civil and Maritime Laws, certainly then are none so fit to hear and decide the same, as those that are well versed and skilled in these Laws, which necessarily must be such as spend their whole time, pains, and labour in the study thereof, and by that means do better understand the diversity of such Laws; and gather more knowledge therein than such as are daily imployed in foreign affairs, and continually busied in multitudes of negotiations, which bring home a golden Harvest, which will not be left or at any time set apart to give way for the study of those Laws which bring in no such profit. Such men will rather be found in their Cellars and Warehouses amongst their rich and precious Commodities, which are to be bartered and sold, than in Studies amongst musty Books, that are to be kept and not parted with; and will rather be seen upon an Exchange, Mart, or Meeting-place of Merchants then upon a Bench of Justice:

tice: And in this my said Author *Vinius* agreeth with me, who saith, *Cætera enim scire possunt etiam qui vitam umbratilem colunt, et hi si quid literis mandare volunt plura conquirere solent, et curiosius cuncta rimari quam aut pragmatici qui raro relictâ messe aureâ, quàm assidua rerum forensium offert tractatio, literarum monumentis unde nullus præventus est, student, aut quilibet alii, quos nimia et circumfusa obsidet et opprimit negotiorum multitudo.*

And now since I have thus far deviated and digressed from the way that I was in, give me leave here (in so necessary a course, or rather discourse) to go a little further, and afterwards get home again as well as I can. Let me shew of what necessary use the Civilian is in these Admiralty Courts, which have the decision of Maritime Controversies, and how unfit other men not versed or skilled in that Law are for the undertaking thereof.

I know it will be objected unto me in the first place, that some Admiralties in foreign parts are regulated and ruled by the Justice and Judicature of Merchants, and other seafaring men well experienced in matters of that nature.

I must confess I am no Traveller, and that in regard have not been amongst these Mercatorian and Nautical Judges; but yet have I in my study travelled through the decisions and determinations of many foreign Judicatures, and by that means (I believe) do know their Laws somewhat better than they which have travelled through those Countries, but not through those Courts.

And I do find that where such Mercatorian and Nautical Judges are, they are either Civilians themselves, or at least far better versed in the Civil Law than any of the Merchants or Mariners of our Nation do seem to be; or else they are not
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only assisted, but regulated and ruled by Civilians, and moreover by certain Letters yet remaining in my Study which I have (in that short time that I have been versed in the high Court of Admiralty in *England*) received from such foreign Admiralty Courts, and the Copies of Letters which were unto them returned in answer, and their replies thereunto, I can shew, that upon contest for the right of Jurisdiction in the cognizance of causes, which have happened between Foreigners and English, whether the Causes were to be decided by their Court or this, that they have urged and quoted the Civil Law for the foundation of their Arguments, for their right of Jurisdiction therein, and have received satisfaction by answers framed out of the same Law unto their said Arguments.

If I should here set forth those Letters and Copies, it would thereby appear, that the Jurisdiction of the Admiralty Court of *England* hath been maintained and defended by Civilians in another manner than the same would have been by such Mercatorian or Nautical Judges, and that the Subject of this Nation thereby hath gained that Justice and Right at home, which might otherwise perhaps have been hazarded abroad.

But I intend not to stuff or fill up this short Treatise (which I intended should have been far shorter, when I first took it in hand) with Packets of Letters received from several foreign Judicatures, and the answers thereunto returned, which will hardly, or not at all be understood by such as are not already convinced of that which they should be here set down to prove.

Nor will I here set forth how far those Mercatorian Courts (though assisted by Civilians through their over-powering of their said Assistants) have fallen short of those which have been and are wholly

wholly regulated and governed by Civilians, as well in point of proceedings, as in point of the distribution of Justice.

But I will here take occasion to set forth some inconveniences, not a little destructive only to Trade, Traffick, and Commerce, and so to the Merchant himself; but also to Shipping and Navigation it self, which might, and doubtless would happen, if the decision and determination of Maritime Causes should be left unto, or settled upon Merchants and Owners of Ships to judge according to their own skill and observations, without that *Jus scriptum*, that written Law which passeth, is allowed and practised in all Admiralties of Europe, wherein they cannot be so well versed, as those who have spent their whole time in that study of such matters as much conduce to the knowledge thereof.

I shall but once again put you in mind of what hath been already said concerning the necessity of upholding one and the same Law in all Nations in Maritime Causes, for one Nation's rendring of the same Justice to another that it doth from thence receive, which is the chiefest thing that maintaineth the Community of Traffick and Commerce; which cannot possibly be done if the same should be rendred by the various fancies of men, in no wise guided by any certain form or rule, but by that thing (than which nothing can be more uncertain) which men call opinion; *tot capita, tot sententia*.

And then I will further say, that for the reason before set down in this Chapter, the Mariner who cometh in with one good wind, and goeth out with another, and must *opportune vela ventis applicare*, upon any controversy or difference arising upon or about the payment of his wages, cannot have

have so sudden and quick dispatch or determination thereof by such Mercatorian or Nautical Judges, who have other affairs and busineffes to attend, as by those who make the decision and determination of Maritime Causes their whole work, and attend wholly upon the same every day of the week, both Term and Vacation.

Again, it is considerable what justice the poor Mariner could expect, or should be like to have, if the determination and adjudication of their wages should be left unto Merchants and Owners of Ships (as some men would have it) out of whose freight the same ought to be paid, and would be as it were parties in all Causes of that nature ; and if the Cause should not at one time be their own, yet must it, and would it assuredly be at another ; and so at all times would it be their own case, tho' not their own cause ; and very seldom would it be, that it should not be their own cause, there being so many Merchants that are Owners of Ships, and so many Owners of every Ship of any burthen considerable ; and every Part-owner of one Ship for the most part, Owner or Part-owner of more, if not of very many ; so that for the most part, some or other of the Judges themselves would be absolutely concerned in the matter of difference depending before them, and the poor Mariner left to their good will and pleasure for his wages and recompence for his pains impended, and his time spent in their service, which would be a means to dishearten and discourage all Mariners for serving in *English* Bottoms, whensoever employment should be offered them elsewhere.

Again, in the commixture and joint Trade of Merchants one with another, having their complices and copartners in all or most of their trading

ing and merchandizing affairs, and such their trading and dealing each for other, and in each other's name, that it might and oftentimes would fall out, that when a man conceived that he had commenced a Suit against his adversary, and whom he had dealt and traded with, he should in conclusion find that he had commenced the same against one or more of his Judges, that were to judge and determine his Cause, or rather the same might fall out so to be, and not be at all discovered.

Much more I could say to this purpose, but I hasten to return to that which I principally intended to set forth in this Chapter, namely, to shew by some few Authors of very many, that much of the Civil Law it self is of use, and in force in all Admiralty Courts, as well as any other Maritime Laws.

And as I last instanced in *Vinius*, I shall in the next place instance in the Authors by him mentioned, namely *Benvenutus Straccha*, who writeth *de mercatura sive mercatore, de contractibus mercatorum, de mandatis, de sponfionibus, de nautis, navibus et navigatione, de navibus iterum, iterumque de navigatione, de conturbatoribus, sive decoetoribus, quomodo in causis mercatorum procedendum sit, et de adjecto*: Of Merchandises and Merchants, and of their Contracts, Mandates, Warrants, and Bargains, or promises of Mariners, Ships, and Navigation jointly, of Ships severally, and of Navigation by itself, of Bankrupts, and failing Merchants, in what manner Merchants Causes are to be proceeded in, and of Factors or Substitutes, &c. which Book was printed and set forth within this last Century of years. And I do earnestly desire those that hold the Civil Law useless in these affairs, and in the Courts designed for determination of differences happening therein, but to look into the

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before

before mentioned Book, together with *Grotius de jure Belli et Pacis*, *Gentilis*, et *Loccenius*, who are latter Writers, being all easily to be had, and they shall find the very Text of the Civil Law, and Commentators thereon, not only out of these before mentioned selected Titles, but out of divers others, cited and quoted for authority in all the several points the said Authors do handle or treat of, which I hope will be sufficient to convince any judicious man, and sufficiently persuade him that the Civil Law it self is of most exquisite use in all Admiralty Courts.

C H A P. XVI.

That by several of the Laws of the Titles selected out of the body of the Civil Law by Peckius, for the determination of Maritime Causes, and divers other of the Civil Laws conducing thereunto, it doth appear that the Ports and Havens, and busineses done thereupon, are within the Cognizance of the Admiralty Jurisdiction.

HAVING now made it appear that there have been several Titles selected and gathered out of the body of the Civil Law, for the decision and determination of Maritime Causes, and the same then, and since very lately commented on for the better understanding thereof, and the more perfect knowledge therein ; now it will remain to shew that by these Laws, and divers others of the Civil Laws mentioned in the foregoing Chapters
of

of this Book, it will plainly appear, that the Ports and Havens, and all things had, done, or agitated thereon, are within the power and cognizance of the Admiralty Jurisdiction.

And the first of those Titles, so far forth as it concerneth the Admiralty is, *Nauta*,^a *Caupones*, &c. *ut recepta restituant*. And this Title consisteth of several Laws, whereby Masters of Ships, Mariners, &c. are compellable to restore such Goods, Wares, and Merchandises, as they shall have received aboard their Ships.

Now if the Jurisdiction of the Admiralty Courts had been restrained unto the high Seas, where Masters of Ships and Mariners seldom or never receive in, or deliver out their Merchants goods, but upon some meer accidental occasion; and had had no cognizance of Causes happening and falling out upon the Ports and Havens where usually they receive them in, and deliver them out; then certainly little reason had *Peckius* had to have made this Title to have been the first of those select Titles he gathered out of the body of the Civil Law, for the decision of Marine Causes, which belong to the Admiralty Courts; and as little reason had *Vinius* had to have added so lately his additional Notes thereunto for that purpose.

The next Title so collected, is ^b *de Exercitoria actione*, which concerneth Contracts, and is to be made use of in its place.

The next is the Title ^c *ad legem Rhodiam de jactu*, which I have already instanced in to this purpose in the 9th, 10th, and 14th Chapter of this ^d second Book, and therefore shall pass it over in this place.

^a F. tit. 9. lib. 4.

^b F. lib. 14. tit. 1.

^c F. lib. 14. tit. 2.

^d Sup. lib. 2. cap. 9, 10, 14.

The next to this is the Title *de incendia, ruina, naufragio, rate nave expugnata*, of and concerning burning, destruction, and ruin of things, shipwrecks, robbing or spoiling of Ships. Now as under the first of these Titles, *Caupones et Stabularii*, Victuallers and Inholders were comprehended as well as *Nautæ*, Mariners; and yet is it by *Peckius* collected and commented on, only for so much as concerned Marine and Nautical Affairs, fit and proper for Admiralty Courts, who saith that it is his purpose and intent in his Comment to explain those Laws only that belong thereunto, and saith that the other are but things which have some affinity with, or likeness unto the other, or are things handled by such as handle things of another nature, which he expresseth in these words: *Contestatum ante omnia hæc volo te, Lector, non expositurum me hoc titulo, nisi eas leges quæ ad rem nauticam pertinent; illud enim nostri est instituti, cætera vel adfina sunt, vel ab aliis utcumque suis locis^f examinata.* So under this Title, although burning, ruin, and destruction of things at land be comprehended as well as shipwreck, &c. yet doth *Peckius's* Comment extend only unto those Laws therein, which concern Maritime affairs.

Now these Laws which concern offences committed in case of shipwreck and robbing, and despoiling of Ships, or other Vessels comprehended under this Title, do indistinctly handle the same, whether they happen to be done upon the high Sea, or upon any Port, Creek, or Haven, (where most of these things most commonly happen) as by the particular Laws themselves it doth manifestly appear.

^e F. lib. 47. tit. 9. ^f *Peckius in principio super dicto tit.*

This Title setteth forth how and in what manner such persons shall be punished, which (when any Ship, or other Vessel, not being a derelict, shall be wrecked, stranded, or otherwise distressed by robbery, opposition, quarrel, spoil, or ^s otherwise) with a deceitful intention, to steal, take, carry away, receive, or damnify^b any of the Goods, Wares, Merchandises, Tackle, Furniture, Ammunition, Provision, &c. belonging thereunto, though the same were cast out of the ⁱ Ship, and that indistinctly, whether the said misfortune happened, either upon the high Seas, or upon the Ports, Havens, Creeks, or Coasts of the Sea, where Ships and other Vessels do ride, lie at Anchor, or have their station; and indeed more proper is this Law for the Ports, Havens, Creeks and Coasts of the Sea, than for the high Seas, it rarely or never falling out, that any persons are present to steal, take, carry away, damnify, conceal, or imbezzle any of the goods belonging to any Ship or Vessel which shall be there wrecked, nor the goods belonging to any Ship that shall be there robbed, or in fight with an Enemy, but such as are either the Pirates or Enemies themselves, neither of which fall under the Judgment of this Law, the one falling under that Judgment which is proper to Pirates, the other under that which is proper to an Enemy; and this being not appointed for the punishment of such as are either the Robbers, Pirates, or Enemies, which set upon the Ship, but of such as take the advantage whilst such strife and contestation is, or when any wreck doth happen, and when the Master and Mariners are in a distraction, do take away the Goods be-

^s F. lib. 47. tit. 9. l. 1. l. etiam 3. § deinde ait Prætor. ^b Leg. eadem § non tantum. ⁱ L. eadem § non solum.

longing unto their Ship, which must needs most commonly fall out, when any such Ship or Vessel shall happen to be so wrecked, robbed, or despoiled in a Port, Haven, Creek, or Coast of the Sea, where the Shore is near, and the Goods are either cast upon the same, driven thereto, or with Boats, Engines, or other Instruments fetched or brought thereon.

And by the two next Laws it more plainly appeareth, that this Title principally aimeth at such as shall offend in this manner, when a Ship is in her Port or Haven, or upon any Creek or Coast of the Sea, and there doth suffer any such distress, or any such sad accident doth befall ; for that those Laws take care as well for the punishing such as shall take away any of the Goods from off the Shore, which shall be cast or driven thereon, as the punishment of those that shall take them out of the Ship itself. *Item ait Prætor, Si quid ex naufragio, hic illud quæritur utrum si quis eo tempore tulerit, quo naufragium fit, an vero etiam si alio tempore, hoc est, post naufragium: Nam res ex naufragio etiam hæ dicuntur, quæ in littore post naufragium jacent, et magis est ut eo tempore*^k.

And the third Law runneth in these words: *Qui autem in littore rem jacentem, postea quam naufragium factum est, abstulerit, in ea conditione est, ut magis fur sit, quam hoc edicto teneatur, quemadmodum is qui quod de vehiculo exciderit, tulit*^l. And many things more of the same nature are comprehended under the several paragraphs of this Law.

^k Ff. de incend. ruin. nauf. l. prætor ait. Sect. Item prætor ait: et l. si quis 5. Sect. jacentem. ^l Eod. l. quod naufragium in prin.

And these distresses happening at high Sea, there is little help to be expected from any at land, in gathering and preserving the Goods like to be lost; but by this Title encouragement is given to such as shall help in this kind. *Plurimum interest peritura collegerint, an quæ servari possint invaserint* ^m.

And the Seventh Law plainly forbiddeth such as dwell upon or near the shore, to take away such Goods so wrecked, though stranded, broken, or cast upon ground, within the confines of any man's ground. *Nam et Divus Adrianus edito præcepit, ut hi qui juxta littora maris possiderent, scirent si quando navi vel infixâ vel fractâ intra fines agri cujusque ne naufragia diripiant, etc* ⁿ. Yet to make the matter more clear that these Laws were collected out of the body of the Civil Law, as well to direct the Judgments of Maritime Judges upon those offences and trespasses committed upon the Ports, Havens, Creeks and Coasts of the Seas, as upon the high Seas, I shall instance in an Authentick, by the same Author collected out of the same Law, and by him likewise commented on, wherein it is expressly set forth that Ships and Vessels of what kind soever, useful for marine businesses (for so much the word *navigia* doth import) in what place they shall come, which must needs be Ports, Havens, and Creeks of the Sea, as well as the high Sea, if by any contingent accident they shall be broken, or otherwise come on ground, as well the Ships as the Goods of the Sailors and Adventurers therein shall be preserved whole and entire unto those unto whom they belonged before such Ships or Vessels fell upon the said danger, the Custom of all places whatsoever

^m Eod. l. Pedius. Sect. Divus Antoninus. ⁿ Eod. l. Ne quid. 7.

contrary to this Sanction being altogether to be set aside, unless they be the Ships of Pirates or Enemies. These are the words of the Authentick:

Navigia quocunque locorum prœvenerint, siquo casu contingente rupta fuerint, vel alias ad terram prœvenerint, tam ipsa navigia quam navigantium bona ipsis integra reserventur ad quos spectabant antequam navigia hujusmodi periculum incurrissent, sublata penitus omnium locorum consuetudine, quæ huic adversatur sanctioni, nisi talia sint Navigia quæ pyratricam exercent pravitatem, sive nobis sive Christiano nomini inimica °.

Before I pass any further, I must needs here observe the same thing that *Peckius* hath observed upon these words of this Law, *Sublata penitus omnium locorum consuetudine, &c. viz. Illud sane sine ullâ dubitatione dici potest, quod certum sit consuetudinem contra jus naturæ nullam habere potestatem* ^p. That it may without any doubt be said, that it is certain that a custom against the Law of nature hath no power or efficacy. And further he saith, *in casu constitutionis nostræ omnium consensus operari quicquam non potest cum divinis naturæque præceptis consuetudo ejusmodi repugnare videatur* ^q.

In this case the consent of all men can work nothing, because such a custom may be discerned to be repugnant both to the divine and natural Precepts; and herewith doth *Vinius* learnedly concur, and much blameth such as have suffered any such custom.

And with this Law agreeth the very first Law of another Title, to the same purpose with this collected by the same Author in these words: *Si quando naufragio navis expulsa fuerit ad littus, vel*

° Authr. *Navigia, et de Furtis*. ^p *Peckius super eod. loco.*
^q *Peck. ibid.*

si quando aliquam terram attigerit, ad dominos pertineat, fiscus meus sese non interponat; quod enim jus habet fiscus meus in alienâ calamitate ut de re tam lucuosa compendium sectetur? Whensoever a ship by wreck shall be driven upon the shore, or whensoever she shall be run upon any ground, i. e. either in Port, Haven, or elsewhere, she shall belong unto her Owners; my Exchequer or receipt shall not intermeddle therewith; for what right hath my Exchequer, that it should require or seek for any small matter or trifle in so mournful or sad matter or condition?

I must confess that by this last observation, I have made some digression from my intended purpose; yet have I not gone much out of my way, nor far about to discover what a Rock we of this Nation (who pretend not only many Customs, but inforce several Patents and Grants, howsoever obtained, clean contrary to this Law) are like to fall upon, and what a wreck we are like to make of our Maritime Law, whereby we uphold all our Trade, Traffick, and Commerce with other Nations, by falling upon this Error, so strongly maintained by Sir *Edward Coke*, that the Ports and Havens are not within the Jurisdiction of the Admiralty Court, whereas this Law is universally practised in all parts of the World.

For although by this Law, and the Inquisition taken at *Quinborough*, in the end of *Edward* the Third's reign, and by the Inquisition translated into *Latin*, out of an antient *French* Copy by *Roughton*, upon any wreck, stranding, or running on ground of any Ship or Vessel whatsoever, or wheresoever, the owners are to have their Ship or Vessel, or such part thereof, such tackle and furni-

¹ L. 11. et de naufragiis, tit. 5. l. si quando. r.

ture thereof, and all such Goods as are saved and can be found out, entirely restored unto them : Instead hereof many Lords of Manors, who perhaps had some right of claim to all, or some part of pirates or enemies Goods so wrecked, as the best Anchor and Cable, &c. where the rest of the Goods belonged or were confiscable either to the Lord high Admiral, or supreme Authority (as in some cases they are to the one, in some to the other) will (as I do already find) even out of the Ships and Goods both of those of our own Nation, and of our friends, and those that hold good correspondence, and are in amity with us, under a pretended custom contrary to all Law, claim and have the same in the like manner, and other customs likewise, which are as contrary to the Law of Nature as this.

And not only so, but many even of our own Nation, and others of other Nations, who neither are Pirates nor enemies to this Nation, but in amity and friendship therewith, may have their Ships stranded or wrecked and cast away, and have their Goods even snatched from them by force and violence, and carried away, and detained by such as can have neither pretence nor colour for such unjust and inhumane dealing, contrary to the Law of Nature and Nations, and that Law which is elsewhere universally practised, if the current stream of Justice of the Admiralty Court, in these Ports, Havens, Creeks, and Coasts of the Seas shall be interrupted and stopped under this pretence, of having no Power or Jurisdiction over them.

Which pressures in such extremities, if they shall fall upon those of our own Nation, we shall seem even to devour and eat up one another ; if they shall fall upon Foreigners, that are in league
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and amity with us, this breach of a Law so general may be a cause of the breach of such league and amity, or at least of the begetting of Letters of Reprizal, on their part against our Merchants and owners of Ships, which is *Prima species belli*: by which way of their reparation, the Subjects of this Nation are like to pay at least three fold for the damage done, by such wicked and mischievous people, and not by themselves.

But here an Objection * will arise, viz. that by the expresse words of a Statute of the Land, made in the 15th year of the reign of *Richard* the second, the Admiral is to have no Cognizance, Power, nor Jurisdiction of wreck of the Sea.

To which I answer, that by wreck of the Sea, in this Statute mentioned, is, as I conceive, and under correction, only meant and intended such things as are cast out of the bowels of the Sea, and by the waves thereof driven on shore, and upon the reflux thereof, left upon the Land, wherein no man hath any property, or to which no man can make any claim. This is properly called a wreck of the Sea, which belongeth properly to the King, and by his grant unto the Lord High Admiral: But in case any Ship, or other Vessel, shall be wrecked at Sea, or in any Port, Haven, or Creek, or upon or near any Coast, neither the Ship nor Vessel, nor any of the Goods thereunto belonging, howsoever found therein, or found floating upon the water, or driven on shore, or dry land, are wreck of Sea, though the Ship be usually said to be a Ship wrecked, and the Goods said to be wreck, but indeed are *bona sparsa ex naufragio*; Goods scattered and thrown over-board, through shipwreck, or fear or danger of shipwreck, where-

* Object. ex stat. 15 Rich. 2. cap. 3.

in the owners of them have a just property, and may make their claim thereunto at any time within a year and a day, and ought to recover and have the same again, by the Laws of the Sea; and therefore hath that Law exactly set forth, how, and in what manner such as shall either by violence, or by stealth, or howsoever take, and carry away, or conceal any such Goods, from the lawful owner, and proprietor thereof, ought to be punished, and make satisfaction for such their offence committed against the Law ^t.

And as that Law doth distinguish those things, which be *ex naufragio*, from wreck of the Sea; as plainly it doth; so doth it distinguish the offence of taking away such Goods, at the very time of the shipwreck, from the offence in some time after the same, as is plain by the Laws before quoted in this Chapter ^u.

But since the making of this Statute, in regard of the differences which did arise, and which did grow about such Goods whether the same were wreck of Sea, which belonged unto the King, or derelicts, Ships or Goods forsaken, and given over for lost; or *Flatson*, that which after a wreck, was found floating upon the water, and by no man claimed; or *Jetson*, that which was thrown over board to disburden and lighten the Ship, for preservation thereof, and of mens lives, and the rest of the Goods; or *Lagon*, that which was found in the bottom of the Sea, or any great river beneath the first bridges, within the low-water mark, all which belonged to the Kings of *England*, who have usually granted the same which belonged unto themselves, unto the said Lords Admirals,

^t Suprà cap. hoc hujus libri. ^u F. de incend. ruin. naufr. l. Prætor ait Sect. It. Prætor ait, et l. Siquis 5. Jacentem et l. quo naufr. prin.

amongst the other things before mentioned (as doubtless they may do, the same being confirmed unto themselves by the Statute, and unto their own use) and the said Admirals have constantly had the same, and the benefit thereof.

Another Title there is amongst the said collected Titles *de Naviculariis seu naucleris*, by the Laws whereof it doth likewise appear that the Admiral hath Jurisdiction upon the Ports and Havens. The first of them saith thus: *Nullam vim oportet naucleros sustinere delegatas species annonarias transferentes, nec concussiones, nec aliquod genus incommodi; sed venientes ac remeantes omni securitate potiri, decem librarum auri multa proponenda his qui eos inquietare tentaverint*: No force or violence, or any manner of disturbance or hindrance shall be offered unto the Masters of Ships, or Mariners, which are appointed by their Prince, to transport any Goods or Commodities for the publick use or benefit, under the pain of ten pounds, to be imposed upon such as shall adventure to molest or disquiet them. Now I hope no man will say that this extendeth not to such force, violence, or molestation, as shall be offered unto them upon any Port or Haven, either before their setting sail to sea, or in any Port or Haven of their discharge, or in any Port or Haven they shall by storm or stress of weather be driven into. And this Privilege, saith *Peckius*, is no small benefit unto them; for they can neither be arrested, nor detained, nor compelled to pay any Custom or Tribute: *Quod privilegium, quæ prerogativa, utilitas mehercule modica non est; etenim nec arrestari (ut dicunt) nec detineri, nec ad vectigalium solutionem compelli possunt*, which certainly sheweth that

* C. li. tit. i. de naviculariis seu naucleris publicas species transportantibus l. nullam vim.

this Law extendeth to the Ports and Havens upon which all Arrests of Ships, or other Vessels, or Mariners are for the most part made, and all compulsion to the payment of Tribute or Custom used or exercised.

If this be not enough, take the last Law of the same Title, and *Peckius* thereupon, in these words: *Judices qui onusta navigia, cum prosperior status invitat, sub prætextu hiemis immorari permiserint, et cum municipibus et corporatis ejusdem loci fortunarum propriarum feriantur dispendiis, naucleri præterea^x pœnam deportationis accipiant, si aliquid fraudis eos admisisse fuerit revelatum:* Such Judges as shall permit or suffer such Ships or Vessels so laden with Commodities for the publick use and service of the Commonwealth, having a good wind, to stay or demore in any Port or Haven under the pretence of Winter, shall together with the Burgers, or chief of that place, bear or pay the loss or damage thereby sustained: And the Masters of those Ships which shall be found guilty of such offence, or fraudulent in that way, are to be punished with banishment. Now no man will doubt but that this stay or demorage, which is thus strictly to be looked after by the Admiralty Judge under such a Pain or Penalty, and so severely to be by him punished, is such stay or demorage as is made in the Port or Haven, and not upon the high Seas. And *Peckius* saith in expresse words, if they shall stay or demore in the Port or Stations for Ships at such time, it is the office of the Judges by all ways or means to drive them out, or compel them to go on upon that Voyage they are designed. *Quinimo si tempore ad navigandum idoneo, suspensâ navigatione, in portu stationibusve hærerent, Judicis erit officium omnibus modis eos abigere.*

^x Eod. l. fin. *Judices qui.* ^y *Peckius super ead. leg.*

And by the same Law all Ships and Vessels of what nature, condition, or quality soever they be, and whosoever they be, may be by the power and authority of the Admiralty seized on in any Port or Haven where they ride, and be ^z taken and employed upon any service of the King, and are not to be excused.

One Title more of the Civil Law I shall instance in, which treateth of things done upon the Ports and Havens, and then return to some other Arguments out of our own Precedents at home; and that is the Title of the Digests, *Nequid^a in flumine publico, &c.* where the Prætor doth interdict, *Nequid in flumine publico, ripæve ejus facias, nequid in flumine publico, ripæve ejus emittas, quo statio, iterve navigio deterius sit, fiat.*

The Prætor forbiddeth any thing to be done, or to be cast forth into a publick River, or upon the banks thereof, which may either hinder the lying or riding of Ships there: And this Edict extendeth directly to Rivers navigable, and none other, which are the Ports and Havens, and those other parts of the same River through which Ships and other Vessels do sail to the place of their station or anchorage. *Hoc^b interdictum ad ea tantum flumina publica pertinet, quæ sunt navigabilia, ad cætera non pertinet.* Nor doth the Prætor here forbid any publick lawful use of these publick Streams, Ports, or Havens; but taketh a special care, that nothing therein shall be done which may deteriorate or hinder the safe and quiet passage, anchorage, and lying of Ships there. *Non autem omni quod in flumine publico, ripæve sit, c^c coer-*

^z F. de navibus non excusandis. C. li. xi. tit. 3. et Peckius, ibidem. ^a F. ne quid fiat in flum. publ. l. i. in prin. ^b F. ne quid in flum. publ. l. i. in prin. ^c Eod. l. ead. et § eod.

et Prætor ; sed si quid fiat quo deterior statio et navigatio fiat ; and the same Law setteth forth what is accounted to be a deteriorating or making worse of the said station, anchorage, riding, or sailing of Ships : *Deterior statio, item iter navigio fieri videtur, si usus ejus corrumpatur, vel difficilior fiat, aut minor vel rarior ; aut si in totum auferatur ; proinde seve derivetur aquâ, ut exiguior facta, minus sit navigabilis, vel si dilatetur aut diffusa brevem aquam faciat, vel contra^d sic coangustetur ut rapidius flumen faciat ; vel si quid aliud fiat, quod navigationem incommodet, difficiliorem faciat ; vel prorsus impediat, interdicto locus erit.* The Station or Anchorage, and also the passage for Ships doth seem to be deteriorated, and made worse, if the use thereof be corrupted, or made more difficult, less, or more shallow, and more seldom to be used, or shall be wholly taken away. Further, or if the water shall be from thence drawn, and so be made less, and so less navigable ; or if the banks shall be taken away, and the River thereby made wider, and caused to spread it self more in breadth, whereby the water cometh to be made more shallow : Or on the contrary, if it shall be encroached on, and so streightned, that the River passeth with more strength or violence ; or if any thing else be done which may disaccommodate Navigation, or make the same more difficult, or altogether hinder it, this Edict shall take place against the same.

From which Law many Articles of the Inquisition taken at *Quinborough*, and of the ancient *French* Articles, translated into *Latin* by *Roughton*, set forth to be inquirable in the Admiralty, are plainly derived ; which Articles, and likewise many Statutes which forbid the same offences, were en-

^d Eod. l. ead. et 15.

acted to make the same more notorious to the people, and are only in pursuance of this Law, which is the fountain from whence they flow as their original.

Now lest some should still strive against the stream; and offer to contend, that this Edict of *Nequid in flumine fiat, &c.* that nothing shall be done in any navigable River, or the Banks thereof, which may hinder Navigation, or the station or anchorage of Ships, is meant only of the River which leadeth to the Port or Haven of discharge, wherein Ships do oftentimes lie at Anchor before they can come further up to be discharged in the Port. I shall further clear this point by the Interdict mentioned by *Labeo* in the 17th Section of the same Law, where the very word *Port* is used; *Nequid in^d mare, inve littore, quo portus, statio, iterve navigio deterius fiat.*

After all this, perhaps some may launch further out into the deep, and say that although these Laws collected out of the Civil Law, are made use of in Maritime affairs beyond the Seas, and do argue their Admiralties to have Jurisdiction upon their Ports and Havens, yet are they of no use here, for the Admiralty of *England* is by the Common Law of *England* more restrained, and extendeth not unto the Ports, nor hath so large a power as foreign Admiralties have.

Since so many Nations as are named in the Libel subsequent unto the last Chapter of the first Book of this Maritime Dicæologie, have by the same so fully acknowledged the Regimen, Government, and Jurisdiction over the narrow Seas to belong to the Admiralty of *England*, and no other Admiralty, as is plainly in the same set

* Eod. l. ead. § 17.

forth. Let none of this Nation for shame say that the power and authority of this Court, which extendeth as far, and further than the power of any other Admiralty Courts doth, shall be nothing at or near home. Nor let it for shame be said that our Admiralty, to which they have not only ascribed, but prescribed from so antient antiquity, such superiority, shall not afford unto Foreigners the same Justice other foreign Admiralties afford unto this Nation.

But for further satisfaction to such as will be further curious, I shall proceed to make further proof of this point by Precedents out of our own Courts at home.

C H A P. XVII.

That by the Records of the Admiralty, it appeareth that the Admiral had, and hath Power and Jurisdiction upon the Ports and Havens.

THE Statute of the 28th of Hen. 8. cap. 15. ^a directeth that the trial of Traitors, Pirates, Thieves, Robbers, Murderers and Confederaters upon the Sea, or in any Haven, River, Creek, or other place, where the Admiral or Admirals have or pretend to have Power, Authority, or Jurisdiction, may by virtue of a Commission under the Great Seal, directed unto the said Admiral or Admirals, his or their Lieutenant or Lieutenants, and three or four substantial persons, be made and

done according to the Common course of the Laws of the Land; but taketh not away the Admiral's power of trial of the same offences, by the course of the Civil Law, as had been formerly used; but leaveth him to proceed in causes of that nature either way, as the proof the fact may be most fitly had, or made. And this Statute is so far from limiting or taking away any of that Power or Jurisdiction he had before upon the Ports, Havens, and Creeks of the Sea, and other places, that in express words it confirmeth the same, and further extendeth his power, unto a twofold manner of trial of such offences committed within the same limits, that to his Jurisdiction formerly belonged, to make use of each, as he should see cause.

And the Cognizance and trial of all offences of this nature, whether committed upon the high Seas, or upon the Ports, Havens, or Creeks of the Sea, and whether proceeded against by the course of the Civil Law, or the course of the Common Law, hath belonged unto the Admiral or Admirals, and his or their Lieutenant or Lieutenants. Judge or Judges of the high Court of the Admiralty, or Judges of Vice-Admiralties, and hath been by them constantly and continually practised and used.

I might here lead you into a labyrinth, and so involve both my self and you, in such a vast thicket of heaps of antient Records which remain in the Registries of our Admiralty, which plainly set forth this constant and continued Power and Jurisdiction of the Admiral upon the Ports and Havens, that we should in no short time, nor with little labour get out again.

If I should here go on, where I left in the first Book of this Treatise, and endeavour to give you a

view, but of the Patents only, which several Admirals of *England* have since *Edward* the third's time had (they having from time to time had more plain and clear expressions of the Admiral's Right, Power, Authority, and Jurisdiction, they having by that means grown very large) I should too much swell this small Treatise in proving that which will be by far shorter Records more briefly, and yet plainly enough made to appear.

Therefore to spare mine own labour in writing and transcribing these Patents, and your's in reading them, I shall pitch upon some few other of the shortest Records only of one year amongst above a hundred, since the making of the said Statute, and that shall be the eight and twentieth year of *Queen Elizabeth's* Reign, at which time all the Judicatories of this Nation were in as good perfection, and absolute lustre and splendor for due observation of their just rights and privileges, as at any other time whatsoever.

In the 28th year of *Queen Elizabeth* against the Sessions to be held for the Admiralty, by virtue of a Commission grounded upon the said Statute of *Henry* the eighth, several precepts or mandates issued out of the Admiralty Court unto several persons for the summoning and returning of Juries for the enquiry and trial of all such offences as are mentioned in the said Statute, whether committed upon the Sea, or upon the River of *Thames* below *London* bridge towards the Sea, or upon the Sea-shore wheresoever, within the Maritime Jurisdiction, and Limits of the Admiralty of *England*, or elsewhere, in or upon publick Rivers, Ports, Creeks, or places overflowed by the Sea. I shall here set down a Copy of one of them only which beareth date in the Month of *February* in the same year.

Carolus,

^b Carolus, Dominus Howard Baro de Effingham præclari ordinis garterii miles, magnus Admirallus Angliæ, Hiberniæ, Walliæ ac dominiorum et insularum earundem, Villæ Calisiæ et merchiarum ejusdem, nec non Gasconiæ, Aquitaniæ, classum et marium dictorum regnorum Angliæ præfectus generalis ac socii sui Justiciarii serenissimæ Dom. nostræ reginæ suæ Admirallitatis Angliæ ad omnia et singula prodictiones, felonias, roberias, furta, murderas, homicidia, confæderationes, delicta piratica, spoliationes, deprædationes, etc. et delicta quæcunque tam in, aut super mare, vel publico flumine Thamisis citra pontem Civitatis Londini versus mare, quam super litus maris ubicunque locorum infra jurisdictionem maritimam et limites jurisdictionis Admirallitatis Angliæ prædictæ, vel alibi in aut super fluminibus publicis, portibus, crecis, et locis super inundatis quibuscunque contra pacem ejusdem Domine nostræ Reginæ, atque Statuta, leges et ordinationes dicti Regni sui Angliæ, ac communes leges, Statuta ac ordinationes maritimas curiæ suæ Admirallitatis Angliæ, ejusdem qualitercunque habita, facta, attemptata sive commissa et perpetrata et vicecomiti Surr. etc. Tibi præcipimus, etc. quod venire facias, etc.

^d And the like Warrants or Precepts were at the same time directed unto the Bailiffs of the Liberty of the City of London, in the Borough of Southwark, and likewise unto the Bailiff of Southwark.

^e Another Warrant was likewise directed unto Jasper Swift, the then Marshal of the Admiralty, that he should have Richard Jones, Osmund Sparke, John Barnard, Humphrey Hood, and Thomas Seal, committed for Piracies and Felonies by them done

^b Rot. Admir. an. 28 Eliz. m. 10.

^c Rot. Ad. an. eod. m.

17, 18, et 19. alia sunt præcepta sub eod. tenore.

^d Rot. Ad-

mir. an. 28 Eliz. m. 32.

^e Rot. Admir. an. eod.

upon the Sea, and upon the River of *Thames* below Bridge, towards the Sea, before the said Court in these words.

^f *Carolus Dominus Howard, etc. ut in superdicto præcepto Jaspero Swift curiæ Admirallitatis Angliæ mariscallo, tibi præcipimus quod Richardum Jones, Osmund Sparke, Johannem Barnard, Humfridum Hood, et Thomam Seale in Custodia Militis Macresc. et modo detent. et existent. nuper de pyratibus et felonibus per ipsos super mare et rivum Thamiſeos infra pontem, etc. coram, etc. habeas, etc.*

And there being then divers other Pirates, and other offenders in the Marshalsea, another Warrant was directed unto the Knight, Marshal Keeper of that Prison, to have all and singular the Pirates and other offenders before the said Court, which Warrant likewise ran in the manner of the former; viz. *Carolus Howard, etc. tibi præcipimus quod tertio die Octob. etc. coram, etc. omnes et singulos pyratas, etc. habeas, etc.*

And upon return of the said Warrants, several Indictments were preferred against several persons, for several piracies and other offences committed upon the River of *Thames*, below the bridge, besides such Indictments as were preferred against Pirates and Robbers upon other navigable Rivers, and at high Sea.

One against *Conray Bowes* for that upon the 20th of *February*, he, with a certain Wherry, upon the River of *Thames*, within the Jurisdiction of the Admiralty, did enter upon and into a certain Lighter, lying over against *Deptford, etc.* upon the same, *etc. did, etc.*

^f Rot. Admir. an. 28 El. m. 29. ^g Rot. Admir. an. 28 El. m. 33.

^h *Inquiratur pro Dom. Regina si Conraye Bowes nuper Grenwici in Comitatu Kantie Watermanus, vicesimo die mens. Februarii anno regni Dom. nostræ Elizabeth. Dei gratia Angliæ, Franciæ, et Hiberniæ, nunc Regiæ, fidei defensoris, etc. vicesimo octavo, in cymbâ quadam vectoria vocata a Wherry super publicum flumen Thamiseos infra Jurisdictionem maritimam præfatæ Dom. nostræ Regiæ suæ Admirallitatis Angliæ, intentione malevola existent. ac Deum præ oculis suis non habens, sed instigatione diabolica seductus, circa mediam noctem, cymbam quandam vectoriam dictam a Lyghter, tunc super publico flumine rivi Thamiseos ex opposito Depforde Creeke infra Jurisdictionem prædictam ad anchoras residen. vi et armis, viz. baculis, pugionibus, et gladiis piratice et felonice præparatis invaserit, ascenderit, fregerit, et intraverit, ac quantitatem sive numerum centum quinquaginta Fasciculorum, dict. Faggots, valoris et precii decem denar. de bonis et catallis Thomæ Jackson tunc et ibidem prædictis die et anno et loco, in prædicta cymba vectoria dicta a Lyghter sub custodia dict. Thomæ Jackson infra Jurisdictionem prædictam repertum et existentem, extra eandem cymbam et à custodia et possessione ejusdem Thomæ Jackson pyratice et felonice ceperit, furatus est, spoliavit, et asportavit contra pacem supradictæ Dom. nostræ Regiæ nunc, coronam et dignitatem suas, ac contra formam diversorum statutorum hujus regni Angliæ in contrariam editorum et prævisorum. Billa vera.*

And one John Barret, etc. was at the same time likewise indicted for that upon the first of March, in the same year, out of a certain Hoy, called the *Peter of Feversham*, upon the publick River of *Thames*, over against *Cox-Key*, within

^h Rot. Admir an. 28 El. m. 14.

the Jurisdiction of the Admiralty, riding at Anchor, did piratically and feloniously take and carry away one piece of Linen-cloth called Lock-ram, containining, *etc.* together with divers other particulars set forth in the said Indictment, which runneth after the same manner with the former : *Inquiratur pro Domina Regina etc. si Johannes Barret, etc. Billa vera.*

ⁱ And another against John Clements, *Inquiratur si Johannes Clements, etc. Billa vera.*

Another there was against *Winterhey, Bridges, Black, Albons, Saltash*, and others, that they with two Boats upon the River of *Thames* within the Jurisdiction of the Admiralty, did, by force of arms, set upon a Ship called the *Richard* of *Dartmouth* near *Woolwich, etc.* and boarded her, and entered into her ; and one *John Terry*, the Master and Owner of her, did beat and evil intreat, *etc.* and that one *Ralph Williams* did with a Sword, of the price of five shillings, then and there feloniously and violently strike him the said *John Terry* upon the arm, and upon the thigh, and gave him mortal wounds, whereof the said *Terry*, at the same time, then and there died ; and that the said *Winterhey, Bridges, Black, Albons, Saltash, etc.* were then and there present, aiding and assisting, encouraging and abetting in, and unto the said act, *etc.* The words of the Indictment in brief are these.

^k *Inquiratur, etc. si Willielmus Winterhey, nuper, etc. Rogerus Bridges nuper de, etc. Thomas Black, nuper de, etc. Rogerus Albonus, Willielmus Saltash, et alii, in duabus cymbis, super publicum flumen Thamiseos infra, etc. navem quandam vocatam, The Richard, portus Dortmund juxta Woolwich, etc. vi et armis, etc. ascenderunt, etc.*

ⁱ Eod. an. m. 15. m. 13. ^k Rot. Admir. an. 28 El. m. 24.

ac in Johannem Terry proprietarium et magistrum dictæ navis, etc. insult, etc. ac Radulphus Williams ipsum Johannem Terry cum quodam gladio præcii 5 s. super brachio et in femore felonice et violenter tunc et ibidem percussit, ac lethalia vulnera ei intulit, et prædicti Willielmus Winterhey, Thomas Bridges, Thomas Black, Roger Albons, Willelmus Saltash, etc. tunc, et ibidem fuerunt præsentés cum præfato Radulpho Williams, etc. ipsum, etc. de quibus lethalibus vulneribus præfatus Johannes Terry tunc et ibidem instanter obiit, et sic, etc. *Billa vera.*

¹ Another against Richard Jones, Valentine Luyson, and others, for entering into a Ship, over against Blackwall, beating the Master, and taking away Cheese, Butter, etc. which was found *Billa vera.*

^m Another against Bernard Hood, Goodwin, Hufsey, and others for the like, in a Ship upon the River of Thames, over against Eritb, which was likewise found *Billa vera.*

And these are Indictments preferred and found against Pirates and Piracies, or Sea Robberies, committed upon several parts of the River of Thames only; and that but within but a part of the 28th year of Queen Elizabeth.

If I should step into the year either before, or after, and either proceed forwards, or return backwards, I might fill a Volume with Warrants or Precepts of the same kind, with the before recited, and with Indictments for offences of this nature, committed upon this very River of Thames; yet are there (besides the Indictments for Piracies, etc. at Sea) several other Indictments for Piracies, and other offences of this nature, committed upon other great Rivers, beneath the first

¹ Rot. Admir. an. 28 El. m. 21. ^m Rot. Admir. an. 21. El. m. 25.

Bridges, nearest the Sea, as well as upon this; and to shew the extent of the high Court of the Admiralty unto all Ports, and great Rivers where-soever, as well as unto the Sea, I shall instance in two or three of them; the first of which shall be one that was preferred, and found in the same 28th year of Queen *Elizabeth*, and at the same time with those before mentioned.

And that was against *William Winterbey*, *Humphrey Smith*, and others, for piratically setting upon a certain *French* Vessel called the *Susan* of *Meshey*, laden in the River of *Bordeaux* with *French* Wines, and lying at Anchor upon the publick river, called *Hampton* water, within the Jurisdiction of the Admiralty, and then and there, by force of arms, *etc.* making an assault, *etc.* upon *Daniel Bretton*, Governor of the said Ship, and taking away and stealing from the said Ship to the value of 100 *l.* and 70 Tun of *French* Wine, of the value of 300 *l.* of *English* money, of the Goods and Chattels of *Maturine Gantier*, *etc.* The Indictment runneth thus.

ⁿ *Inquiratur, etc. si Willielmus Winterbey nuper de, etc. et Umphridus Smith de, etc. in cymbâ quâdam vectoriâ tunc super publicum flumen vocat. Hampton water, infra, etc. vi et armis, etc. navem quandam Gallicam vocat. the Susan de Meshey in rivo Burdugalensi vinis Gallicis onustam, etc. ad anchoras exist. vi et armis, etc. ac in Daniel Bretton corrector. in Dom. navis, etc. insultum, etc. ac eand. navem, etc. ad valentiam 100 l. ac 70 Dolia vini Gallici valoris 300 l. monetæ Angliæ, de Bonis et Catallis Maturini Gantier, etc. ceperint, furati sint, etc. Billa vera.*

And *Thomas James* was indicted, for that upon *Severn*, beneath the first Bridge of the same, he

ⁿ Rot. Admir. an. 28 El. m. 23.

did

did assault one *John Gethin*, and others, and with a Gun charged with bullets, shot and hit the said *John Gethin*, that he then and there instantly died. The Indictment runneth thus: *Inquiratur si Thomas James de, etc. super quandam partem maris vocatam Seavern, infra primum pontem ejusdem, etc. vi et armis in quosdam Johannem Gethin et alios insultum fecit, et præfatum Johannem Gethin cum quibusdam pilis tormentariis plumbeis, in bombardo, sive tormento pretii decem solidorum inclusis, etc. unam plagam mortalem, etc. de qua idem Johannes Gethin ad tunc et ibidem instanter obiit.*

I shall instance only in one notorious Piracy more, committed upon the same Navigable River of *Severn*, upon which were indicted *William Holborne* of *Southold*, in the County of *Suffolk*, Gentleman, Captain of a Man of War, called the *Hopewell* of *Weymouth Melcombe Regis*; *Edward Wright* of *Berry*, in the same County, Gentleman, otherwise called Captain *Careless*, Captain of a *French* Man of War, of the burthen of forty Tuns; *Henry Ward* of *Barstable*, in the County of *Devon*, Captain of the Ship the *Mary* of *Stonehouse*; *William Sweet* of *Stonehouse*, in the County of *Devon*, Mariner, and twelve more by name, besides others in general: for that upon the second day of *August*, etc. they being in the said three Ships, furnished in a warlike manner, between the Maritime places called *Wormshead* and *Oxmuck*, in the River of *Severn*, within the Maritime Jurisdiction of the Admiralty of *England*, being piratically and feloniously gathered together, did by force of arms, viz. with Swords, Guns, etc. in the said Robbing Ships, piratically and feloniously appointed between the said *Wormshead* and *Oxmuck* within the said Jurisdiction, the day and year aforesaid, piratically and feloniously set upon,

climb

climb up into, break and enter into four Merchants Ships called the *Margaret* of *Caermarthen*, the little *Mathew* of *Caermarthen*, the *Tasker* of *Milford*, and the *Margaret* of *Burrey*, laden with divers Goods, Wares, and Merchandizes at the Fair of *St. James*, then lately held at *Bristol*, whilst they were sailing from the Port of *Bristol*, towards the Port of *Caermarthen*, and did by force of arms assault and make Affray upon, beat and evil intreat, and put in fear of their lives *James Joanes*, *Thomas Richards*, *William Tasker*, and *Griffith Jones*, Governors and Masters of the said Ships under God, and divers other persons, Mariners of the said Ships, unto the said Pirates and Robbers unknown, being then and there, the said day and year, in the said Merchants Ships, in the peace of God, and their said Sovereign the Queen, and three Packs of Woollen and Linen Cloth, Dowlas, Cress-cloth, Holland, Cambricks and Lockerams, to the value of three hundred pounds of *English* money, two great Chests of Velvets, Taffatees, and other Goods, to the value of two hundred pounds, one Iron Chest, to the value of twelve pounds, one pack of fine Dowlas, Lockerams, Cress-cloths, Hollands, Cambricks, Silk Lace, and other Goods, to the value of one hundred and sixty pounds of like *English* Money, one great Chest of *Millian* Fustians and Callicoes, and other Merchandizes, to the value of sixty pounds, and a Chest of large Hats, Mantles, and Clothes, to the value of thirty pounds of like *English* Money, of the Goods and Chattels of *Griffith Atkins* and *Henry Philips* of *Caermarthen*, Merchants, then and there, the day and year aforesaid, between the said *Wormshead* and *Ox-much*, upon the said navigable River, within the Jurisdiction of the Admiralty aforesaid, being and
and

and remaining in the Custody and Possession of the aforesaid James Joanes, Thomas Richards, William Tasker, and Richard Joans, Masters, under God, of the Ships, the Margaret of Caermarthen, the little Matthew of Caermarthen, the Tasker of Milford, and the Margaret of Barry, out of the said Ships from the said Masters, and out of their custody and possession, did then and there piratically, feloniously, and violently take, steal, spoil, and carry away, contrary to the peace of the Sovereign Lady the Queen, her Crown and dignity, and contrary to the form of divers Statutes to the contrary made and provided: The Indictment itself runneth in the same form with those before mentioned, viz.

Inquiratur pro Dominâ Reginâ si Willielmus Holbourne nuper de Southould in Comitatu Suffolciæ Gen. nuper Capitaneus navis militaris, The Hopewell, Portus de Weymouth Melcombe Regis; Edvardus Wright nuper de Berrie in Comitatu Suffolciæ Gen. alias dictus Captain Carelesse navis Gallicæ militariter instructæ oneris quadraginta doliorum vel circiter: Henricus Ward nuper de Barstable in Comitatu Devon. nuper Capitaneus naviculæ vocat. the Mary de Stonehouse: Willielmus Sweet nuper de Stonehouse in Comitatu Devon. Marinarius, nuper proprietarius dictæ naviculæ vocat. The Mary, etc. ac diversi alii pyratæ, et malefactores incogniti, secundo die mensis Augusti, anno Regni, etc. in prædictis tribus navibus militariter instructis, tunc, etc. as is fully set down in English.

Now to shew further that the Cognizance of all matters happening upon these Ports and Havens, did and doth belong unto the Jurisdiction of the Admiralty properly, and entirely, and to no other Jurisdiction, I shall instance in one Record of

of many, whereby it will appear that when the City of London (who by their Charter have more power and privilege upon the River of Thames, than any Judicatory whatsoever, except the Admiralty) have endeavoured to take cognizance of matters of this nature, the same have been demanded from them by the Admiralty Court. And that Record sheweth, that one John Seaward being committed to the Compter in Woodstreet, London, for suspicion of drowning a Boy in the River of Thames, the Sheriff of the City of London was commanded by the Admiralty to bring the said Seaward before the said Court of the Admiralty, upon the 15th of March, in the 30th year of Queen Elizabeth, which Precept was returned by Thomas Dixon, on the behalf of the Sheriff of London, together with the said John Seaward accordingly, and the Precept and Return thereof run in these words.

Carolus Dominus Howarde, Baro de Effingham præclari ordinis Garterii Miles, magnus Admirallus Angliæ, Hiberniæ et Walliæ, ac dominiorum et insularum earundem, villæ Callisiæ, et marchiarum ejusdem, Normanniæ, Gasconiæ, et Aquitaniæ, classisque et marium dictorum regnorum Angliæ et Hiberniæ præfectus generalis, ac socii nostri Justiciarii ad omnes et singulas proditiones, etc. ut in priori Præcepto in hoc capite citato, Vicecomitibus London, nec non Williemo Blunt custodi Computator. Anglice The Counter, in vico dicto Woodstreet, seu ejus deputato cuicunque, salutem: Ex parte præfatæ Dom. nostræ Reginæ tibi præcipimus, et mandamus quatenus non ommitt. propter aliquam libertatem, seu Franchesiā, quin sub pœnâ centum librarum de bonis vestris quibuscunque ad opus et usum dictæ Dom. nostræ Reginæ et nostrorum levand. Johannem Seaward Wherry-man super suspicionem submersionis pueri

pueri cujusdam in rivo Thamiseos, infra Jurisdictionem præd. apud Southwark in prætorio, ibidem die Veneris Proximo quindicesimo die mensis instantis Martii circa horam nonam in uarara, undè cum causis ejus detentionis, si quæ coram vobis remanent, his respondend. quæ sibi ex Parte præfatæ Dom. nostræ Reginae, cum venerit, objicientur; et hoc nullatenus omitteris sub pœna prædicta et periculo incumbenti. Datum Londini in suprema curia Admirallitatis prædicta, sub sigillo ejusdem curiæ 12. die Martii, Anno Dom. 1587. stylo Angliæ, Reginaque, etc. Anno 30. Jul. Cæsar Hareward. endorsat. Thomas Dixon ex parte Vicecomitis London introduxit hoc præceptum una cum retrodicto Joh. Seaward, die Veneris 15. Martii, 1587.

I might here take an occasion to set forth a number of Records of the Admiralty, both of this time, before it, and since, which would set forth the multiplicity of Actions entered, proceeded in, and sentenced in the Admiralty Court, for Injuries, Wrongs, and Trespases done upon the River of Thames, and other Ports and Havens, and likewise shew that when parties have sued in the Courts of Guildhall, London, or other Courts, for any matter of such injury, wrong, or trespass, done unto them, upon the River of Thames, or such other Ports, that they have been called into the Admiralty Court, and there been proceeded against, and punished for their contempt against that Court; and if I should collect them altogether, and here set them forth, they would appear very many for one of the instances set down by Sir Edward Coke, in his 22d Chapter of his fourth Book of his Institutes, against the power and Jurisdiction of the Admiralty upon the Ports and Havens. And yet perhaps it may be said, that herein the Admiralty had usurped a power which belonged

not

not thereunto ; but when as many instances may be set against one, it is easily judged on which side the usurpation lieth ; but to decide the question more clearly, I shall instance in some few of many of the Common Law's own Records, which plainly determine this point of Jurisdiction upon the Ports and Havens, against the instances brought by Sir *Edward Coke*, in his said 22d Chapter against the Jurisdiction and Power of the Admiralty upon those places.

C H A P. XVIII.

That by Writs de Procedendo out of the Chancery, upon Superfedeas from thence granted, the Admiral is acknowledged to have Jurisdiction upon the Ports and Havens.

WHAT hath been already said, I conceive might be sufficient to convince the Judgments of indifferent men, that the Ports, Creeks, and Havens of the Sea are within the Jurisdiction of the Admiralty, and not within the Bodies of Counties. But, because I know this Argument may meet with some particular Contradictors, who will be apt rather to adhere to one President out of the Courts at *Westminster*, than be convinced by very many binding Authorities and authentick Proofs of this nature, I shall make this truth likewise evident by both Writs *de Procedendo*, awarded upon Writs of *Superfedeas*, out of the Chancery, and by consultations awarded upon prohibitions out of the Courts of Common Law.

The

The Ship the *Trinity* of London, *alias* the *Trinity* of Hull-bridge, lying at Anchor upon the River of *Thames*, belonging unto one *Thomas Pierce*, was there arrested, and taken into the possession of the Admiral, and a *Supersedeas* was brought; but *Termino Mich. 27 Hen. 8.* a Writ de *Procedendo* was awarded in these words.

Henricus octavus *Dei Gratia Angliæ, et Franciæ Rex* ^a, *fidei defensor, Dom. Hiberniæ, et in terra supremum caput Anglicanæ eccl. præclarissimo consanguineo suo, Henrico Duci Richmond et Som. magno Admirallo Angliæ, Walliæ, et Hiberniæ, Normaniæ, Gasconiæ, Aquitaniæ, ejusve locum tenenti et commissario sal. Licet nos nuper volentes certis de causis certiorari super causa arrestationis sive attachiamenti cujusd. navis vocat. the Trinity of London, aliàs the Trinity of Hull-bridge, una cum suo apparatu tunc infra Jurisdictionem vestram, ad anchoram residen. ad quendam Thomam Pers jure domini sui quasi pertinentem, sub custodia vestra existentem, ut dicebatur, vobis mandavimus quod causam prædictam cum omnibus eam tangentibus quocunque nomine idem Thomas in causa illa censeret, nobis in cancellariam nostram ad certum diem in brevi nostro contentum ubicunque tunc foret sub sigillo vestro distinctè et aperte mitteretis et breve nostrum prædictum. Quibusdam tamen certis de causis coram nobis in cancellaria nostra præpositis mandamus quod in causa illa cum ea celeritate qua jure et secundum legem et consuetudinem in curia Admirallitatis Angliæ hætenus usitatum poteritis, procedatis, Dicto brevi nostro vobis prius in contrarium inde directo non obstante. T. meipso apud Westm. 14 die, Anno Dom. vicesimo Septimo.*

Crumwell.

^a Super fil. prohib. et consul. in Registro Admi. m. 39.

John Gilbert of Ratcliff sued Thomas Linsey of Woolwich, Fisherman, in the Admiralty Court, for certain Wrongs and Injuries done unto him upon the River of Thames. Thomas Linsey suggesteth in Chancery, that he was there sued pro diversis negotiis, contractibus, et querelis, ac aliis rebus infra corpus Comitatus Cantiaë factis, et emergentibus, and obtaineth a^b Supersedeas: John Gilbert being dead, Dionysia, his Relict, Termino Hillarii, 36 Hen. 8. had a Writ de procedendo, which I have here set down.

Henricus octavus^c Dei gratia, Angliæ, Franciæ, et Hiberniæ Rex, fidei defensor, et in terra Ecclesiæ Anglicanæ et Hiberniæ supremum caput, Charissimo consanguineo et consiliario suo Joh. Vicecomiti Lisle, ordinis Garterii nostri militi, Baroni de Malpas et Somerseii, Domino Basset et Tyasse, magno Admirallo nostro Angliæ, Hiberniæ, Walliæ, Villæ et Merchiarum nostrarum Cales, nec non Gasconiaë, Aquitaniaë ejusve in Curia nostra principali Admiralitatis nostræ Angliæ locum tenenti, officiali et Commissario generali, seu alii ejusdem Curiaë nostræ præsidi cuicunque et eorum cuilibet salutem. Cum nuper ex parte Dionysiaë relictæ, et Executricis Johannis Gilbert dum vixit de Ratcliffe in Comitatu nostro Middlesexiaë defuncti nobis graviter conquerendo monstratum extitit quod cum idem Johannes dum vixit quendam Thomam Lindsey de Woolwich in Comitatu nostro Cantiaë, Fisherman, de et super quodam contractu civili et maritimo pro quibusdam rebus et injuriis aliis eidem Johanni infra nostram Jurisdictionem dictæ Admiralitatis nostræ Angliæ super publico flumine Rivi nostri Thamisaë infra fluxum et refluxum maris, ultra pontem Civitatis nostræ London versus mare, initis, habi-

^b 27 May, 35 H. 8. ^c Eod. m. 66.

tis, factis et illatis, secundum debitam legis formam, et consuetudinem Curiae nostrae Admiralitatis praedictae, coram vobis in eadem Curia implacitaverit, quodque idem Thomas Lindsey cognitionem ejusdem Curiae nostrae Admiralitatis in ea parte fraudulentem et maliciose satagens, declinare et debitum legis processum ibidem minus juste impedire, suggerens inter alia coram nobis in Curia Cancellariae nostrae quod vos eundem Thomam ad respondendum praefato Johanni dum vixit coram vobis in dicta Curia nostra Admiralitatis nostrae Angliae praedictae de diversis negotiis, contractibus et querelis, ac aliis rebus infra corpus dicti Comitatus nostri Cantiae, factis et emergentibus, graviter distrinxistis et multipliciter inquietastis minus juste in ipsius Thomae dampnum non modicum et gravamen, ac contra statutum Domini Richardi nuper Regis Angliae post Conquestum secundi, anno regni sui quinto decimo apud Westm. editi. Et eo praetextu dictus Thomas brevem nostrum de supersedendo datum apud Westm. vicesimo septimo die Maii, Anno Regni nostri tricesimo quinto vobis minus rite dirigi procuravit, cujus quidem brevis nostri vigore, vos in placito praedicto huc usque supersedistis in dispendium. Ideo quibusdam certis de causis coram nobis in dicta Cancellaria nostra propositis, nos in ea parte juste moventibus, et maxime pro eo quod dictum brevem nostrum de supersedendo ab eadem Curia Cancellariae nostrae improvide emanavit, quia dictus Thomas pro rebus et injuriis infra nostram Jurisdictionem Admiralitatis nostrae praedictae factis et emergentibus juste tractatus existit, prout per quendam libellum coram vobis in dicta Curia nostra Admiralitatis nostrae praedictae oblatum, et responsiones dicti Thomae Lindsey ad positiones ejusdem ibidem virtute sui praestiti juramenti facti, et coram nobis in dicta Cancellaria nostra ostensas plenius apparet. Nos volentes quod per

S 2

hujus-

hujusmodi malitiam et suggesticnem cognitio in præfata Curia nostra Admiralitatis nostræ Angliæ taliter derogetur, vobis mandamus quod in placito illo secundum legem et consuetudinem dictæ Curia nostræ Admiralitatis nostræ Angliæ prædictæ procedatis, et partibus prædictis justitiæ complementum in ea parte haberi et partibus prædictis justitiæ complementum in ea parte haberi et ministrari faciatis cum effectu dicto brevi nostro, aut aliqua alia prohibitione vobis inde in contrarium direct. in aliquo non obstanti. T. meipso apud Westm. xix. die Februarii Anno regni nostri tricesimo sexto.

Southwell.

Now it is plain this was an Action brought in the Admiralty for, or concerning certain things and injuries done unto the Agent, within the Jurisdiction of the Admiralty ; and the place which is here said to be within the Jurisdiction of the Admiralty, is a Port or Haven, set down in express words, *viz.* the publick River of *Thames*, within the ebbing and flowing of the Sea, beyond *London Bridge* towards the Sea, *infra Jurisdictionem Admiralitatis Angliæ, super publico flumine Rivi Thamisiæ infra fluxum et refluxum maris, ultra pontem Civitatis London, versus mare, etc.* And this Action is likewise there said to be brought according to due form of law and custom of the Admiralty Court, *secundum debitam legis formam et consuetudinem Curia nostræ Admiralitatis prædictæ coram vobis in eâdem Curia implacitaverit.* And *Lindsey* for suggesting these injuries done upon the River of *Thames*, to be done in the body of the County of *Kent*, is said to have endeavoured fraudulently and maliciously to decline the cognizance of the Court of the Admiralty, and unjustly to hinder the due course of Law there : *Cognitionem*

nitioem ejusdem Curiae nostrae Admiralitatis in eâ parte fraudulenter et malitiosè satagens declinare et debitum legis processum ibidem minus justè impedire, And he is said unlawfully to have procured that Writ of *Supersedas* to be directed to that Court, *breve nostrum de supersedendo vobis minus ritè dirigi procuravit.* And that Writ of *Supersedeas* is said to have gone out rashly and unadvisedly, *improvidè emanavit,* because *Lindsey* was justly sued there for things and injuries done and arising within the Jurisdiction of the Admiralty, *pro rebus et injuriis infra nostram jurisdictionem Admiralitatis nostrae praedictae factis et emergentibus, justè tractatus extitit.* And it is there declared, that the Cognizance of the Admiralty Court shall not by such malice and suggestion be wronged, *Nolentes quod per hujusmodi malitiam et suggestionem, cognitio in praefata Curia nostra Admiralitatis nostrae Angliae taliter derogetur:* And the Court commanded to proceed according to law, *etc.* notwithstanding the *Supersedeas*, or any other Prohibition directed to the contrary.

So by these Writs *de procedendo* out of the Chancery, the Admiral is acknowledged to have Jurisdiction upon the Ports and Havens; and many more of the same nature might be instanced in, which for brevity sake I omit.

C H A P. XIX.

That by Consultations out of the Courts of Common Law, upon Prohibitions thence granted, it is clear the Admiral hath Jurisdiction upon the Ports and Havens.

AS it is manifest by Writs *de procedendo* out of the Chancery, upon Writs of *Supersedeas* thence granted, that the Admiral hath jurisdiction upon the Ports and Havens ; so it is likewise evident by consultations out of the Common Law Courts at *Westminster*, upon Prohibitions from thence upon false suggestions granted, that the Admiral's power and authority doth extend unto the cognizance of such causes as do from thence arise : some of which I shall instance in.

Patrick Landy of Brobeda in Ireland sued Richard Prideaux in the Admiralty Court pro quinquaginta les dicars pellium salsorum, libelling that the said Richard Prideaux had infra fluxum et refluxum maris received and taken into his hands and possession, the Goods and Merchandizes aforesaid, and kept the same, or otherwise had deceitfully alienated them, or disposed of them, ipsum Richardum Prideaux bona, res et merces, etc. in manus et possessionem sui ipsius Richardi infra fluxum et refluxum maris accepisse et sumpsisse, eademque tunc penes se habuisse, seu saltem eadem dolo malo alienasse.

Prideaux suggesteth that these fifty Dickers of Hides being in certain Warehouses at *Padstow*, in the County of *Cornwall*, *infra corpus ejusdem Comitatus*, were by *George Syddenham* and *George Francis* there sold and delivered unto him, and by him

him received and kept, and converted to his own Use, and that he was unjustly vexed and sued in the Admiralty Court for the same, contrary to the Statutes of 13 and 15 of R. 2. and obtained a Prohibition.

But the matter being argued in Court, and the Goods and Merchandizes being found to have been in the possession of the said *Prideaux* within the Jurisdiction of the Admiralty, viz. within the ebbing and flowing of the Sea, 19 die Junii 38 Eliz. a Consultation was awarded, which saith, *Quia tamen Justiciariis nostris apud Westmon. per debitam Examinationem in hac parte factam, satis constat quod prædicta Curia nostra Admiralitatis in hujusmodi placitis, dummodo res sic se habeant, aliquantulum in eisdem impediri seu retardari non debeat.* The Consultation I shall here set down at large, whereby both the Libel, Suggestion, Prohibition, and Consultation will appear.

Elizabetha Dei gratiâ, Angliæ, Franciæ, et Hiberniæ Regina, fidei defensor, etc. venerabili viro Julio Cæsari legum Doctori supremæ Curie Admiralitatis Angliæ locum tenenti, aut alio Judici in hac parte cuicunque ejusdem Curie, salutem. Cum nuper ostensum est nobis quod in statuto in Parlamento Domini Richardi nuper Regis Angliæ secundi post Conquestum, apud Westm. anno Regni sui tertio decimo tent. edit. inter alia inactitatum fuisset auctoritate ejusdem Parliamenti, quod Admiralli et eorum deputati se ex tunc de aliqua re facta infra regnum Angliæ nisi solummodo de rebus factis super altum mare, prout tempore Domini Edwardi quondam Regis Angliæ, avi prædicti quondam Regis Richardi secundi, debite usum fuisset, nullatenus intro-mittant. Cumque etiam per quendam alium actum in Parlamento prædicti quondam Regis Richardi secundi anno regni sui quinto decimo tent. edit. inter
cetera

cætera declarat. ordinat. et stabilit. extitisset auctoritate ejusdem Parliamenti quod de omnibus contractibus, placitis et querelis, et de omnibus rebus factis sive emergentibus infra corpus Comitatus tam per terram quam per aquam; ac etiam de wrecco maris Curia Admiralitatis nullam habeat cognitionem, potestatem, nec jurisdictionem; sed quod sint omnia hujusmodi contractus placita et querelæ, atque omnia alia emergentia in corpus Comitatus, tam per terram quam per aquam, ut prædictum est, ac etiam Wreccum maris triat. terminat. discuss. et remediat. per leges terræ, et non coram Admirallo, nec per Admirallum, nec ejus locumtenent. quovis modo, ac nuper ex insinuatione Richardi Prideaux de Padstow in Comitatu Cornubiæ Generosi accepimus et intelleximus, quod quidam Patricius Landy de Broheda in regno nostro Hiberniæ mercator, statuta et leges prædicta minime ponderans, sed machinans ipsum Richardum contra debitum legis hujus regni Angliæ formam, & contra vim, tencrem, et effectum statutorum prædictorum. Et de et pro quibusdam bonis rebus et mercibus, viz. quinquaginta lez Dickers pellium salforum eidem Richard. per quosdam Georgium Sydenham et Georgium Francis apud Villam de Padstow in Comitatu nostro Cornubiæ in quibusdam domibus vocat. Waterhouses ibidem infra corpus ejusdem Comitatus, et non super altum mare venditis ac deliberatis, ac per ipsum Richardum ibidem receptis, habitis, et detentis, et ad usum suum proprium conversis, ac pro ejusdem captione, possessione, conversione, et detentione eorundem indebite et injuste gravare, opprimere, et fatigare ipsum Richard. pro iisdem rebus et mercibus, ac pro prædictis captione, possessione, conversione, et detentione earundem inter alia bona res et merces per præfatum Patricium in eadem Curia coram vobis libellando spec. indebitè et injustè gravare, opprimere, et fatigare ipsum Richardum

dum pro eisdem rebus et mercibus ac aliis, ac pro prædictorum captione, possessione, conversione, et detentione eorundem in Curia Admirallitatis coram vobis aut alio iudice in hac parte competente quocunque vestrum locum tenente traxit in placitum caute, false, et subdole in eadem Curia Admirallitatis coram vobis aut aliquo vestrum libellando, querelando, et allegando eundem Richardum Prideaux, bona, res, et merces per præfatum Patricium in eadem Curia, coram vobis sic libellando specificè in manus, et possessionem sui ipsius Richardi infra fluxum et refluxum maris accepisse, et sumpsisse eadem, tunc penes se habuisse, seu saltem eadem dolo alienasse, eundemque Richardum in eadem Curia coram vobis vel aliquo vestrum, occasione prædicta comparere, et eidem Patricio ibidem de et in præmissis respondere tanquam in causa civili et maritima, licet eadem bona, res et merces eidem Richardo in forma prædicta vendita et deliberata vicesimo die Februarii, anno regni nostri tricesimo tertio, apud prædictam villam de Padstow prædictam infra prædictum corpus Comitatus Cornubiæ prædictæ; et non super altum mare per præfatum Georgium Sydenham et Georgium Francis eidem Richardo Prideaux, ad opus et usum ejusdem Richardi deliberata fuere, minus justè abstrinxit: Ac licet Richard. idem materiam superius contentam in prædicta Curia Admirallitatis coram vobis aliòve iudice antedicto in exonerationem ipsius Richardi in præmissis sæpius placitaverit et allegaverit, ac illam inevitabili veritate et testimonio probare ibidem obtulerit, vos tamen aliòve iudex dictæ Curie Admirallitatis antedictæ, placitum et allegationem admittere penitus recusastis seu recusavit, prædictusque Patricius ipsum Richardum in bonis, rebus et mercibus prædictis in forma prædicta venditis et deliberatis nec non in expensis ex parte, et per partem prædicti Patricii, et suorum sociorum
sive

frve complicum in eadem Curia Admiralitatis fact. condemnari et condemnatum ad effectualem solutionem eorundem cogi et compelli per vos aut alium Judicem Curie illius, et per vestram vel ejus diffinitivam sententiam frve finale decretum totis suis viribus conatur, et indies machinatur, vosque statuta prædicta minime ponderantes placitum prædictum de et super præmissis coram vobis aliòve judice antedicto nuper tenuistis, vel adtunc tenebatis, sic diffinitivam vestram sententiam et finale decretum inde fulminare et pronunciare properavistis seu properavit in nostri contemptum et ipsius dampnum non modicum et gravamen, et contra formam et effectum statutorum prædictorum; unde idem Richardus in Curia nostra coram Justiciariis nostris apud Westm. auxilium et munificentiam nostram humillime implorando supplicasset sibi de remedio congruo provideri per quod nos jura coronæ nostræ regie, ac leges et statuta regni nostri Angliæ prout vinculo juramenti astringebamur manutenere volentes, ac contra eadem volentes ligeos nostros seētis vel suspensionibus violari aut inquietari illicitis, vobis et cuilibet vestrum per brevem nostrum prohiberemus et præceperimus firmiter injungendo ne ulterius placitum prædictum seu quicquid aliud præmissa aliqualit. tangent. seu tangens versus præfatum Richardum ulterius teneretis, seu aliquis vestrum teneret quovismodo, nec quicquam inde attemptaretis vel attemptari procuraretis quod ipsius Richardi præjudicium aut nostri seu coronæ nostræ Regiæ, aut legis et consuet. vel statutorum regni nostri Angliæ contemptum frve derogationem cadere valeret quovismodo, ac ne ipso Richardo occasione hujusmodi placiti citando, excommunicando, molestando in aliquo seu gravando supersederetis et desisteretis, et quilibet vestrum supersederet et desisteret omnino ipsum Richardum penitus absolventes et exonerantes de eisdem,

Quia

Quia Justiciariis nostris apud Westmon. per debitam Examinationem in hac parte factam satis constat quod prædicta Curia nostra Admiralitatis in hujusmodi placitis dummodo res sic se habeant aliquantulum in eisdem impedire seu retardari non debeat, at quod prædictus Patricius brevem nostrum de consultatione vobis dirigendum in causa prædicta habeat; Ideo vobis mandamus quod prædictus Patricius in causa sua prædicta in prædicta Curia nostra^d Admiralitatis prædictæ licite procedere et facere valeat quod ad prædictam Curiam nostram Admiralitatis noveritis pertinere, prædicto brevi nostro de prohibitione utcumque inde forma prædicta directo in aliquo non obstanti. T. E. Anderson apud Westmon. decimo nono die Junii, Anno regni nostri tricesimo octavo.

Culwicke Scott.

Shortly after the granting of this Consultation by the Lord Chief Justice *Anderson*, and before the cause could come to hearing, or to be fully determined in the Admiralty Court, *Prideaux* upon the same Suggestion procureth another Prohibition from the Lord Chief Justice *Popham*, and thereby again stayed the proceedings in the Admiralty Court, until the 41st year of the Queen. But in that year *vicesimo septimo die Junii*, upon re-examination of the point, another Consultation was awarded agreeable with the former; and the Admiralty Court was then a second time set free to determine the Cause in these more express words: *Ideo vobis mandamus quod prædictus Patricius in causa prædicta quoad omnes hujusmodi res et contractus prædicti. super altum mare, vel super ejus necessaria dependentiâ, Ita quod vos vel prædictus Patricius de aliquibus rebus, contractibus infra cor-*

^d Super eod. fil. m. 8.

pus alicujus Comitatus regni nostri Angliæ factis ne intromittatis, etc. in Curia Admiralitatis prædictæ coram vobis, seu aliquo vestrum licite procedere et facere valeat, etc.

Now here doth this Consultation put a plain distinction between the bodies of counties and the Ports and Havens, here called *necessaria dependentia alti maris* ; and indeed they are such necessary dependants on the Sea, that they may very well, nay they must be called *mare*, the Sea, though not *altum mare*, the high Sea ; otherwise needless and altogether in vain was this distinction of *mare et altum mare*, of the Sea and the high Sea and main Sea, if the Ports, Creeks, and Havens were not *mare*, Sea, and those parts of the Sea further remote from the Land, *altum mare*, the high or main Sea. And then let us consider that though, upon every suggestion, whereon a Prohibition is in such cases awarded upon the Statute of the 13th of Richard the Second, the words *sur le meer* in the same, be in the Prohibition translated *super altum mare* ; yet will not those words *sur le meer*, nor any other words in that Statute bear any such construction (as by the said Statute, if looked into, will appear, which Statute shall be hereafter set down at large according to the Parliament Roll in the Tower^e.) And then is there nothing at all contained in the Statute, which can so much as seem to limit the Admiral to the high Seas, or exclude his Jurisdiction from extending to the Ports, Creeks, and Havens, which are Sea, tho' not high Sea. And so the very Foundation whereon all the Arguments, which tend to the Deprivation of the Admiral of his Jurisdiction upon the Ports and Havens are grounded, is clearly taken away.

§ Inf. cap. lib. 3.

Patrick

Patrick Landy likewise sued *John Prideaux* of *Padstow* pro tribus millibus centenis sepi libellando eundem *Johannem Prideaux* bona, res, et merces prædicta ac alia bona, res, et merces in manus et possessionem sui ipsius *Johannis* infra fluxum, et refluxum maris accepisse et sumpsisse, eademque tunc penes se habuisse, seu saltem eadem dolo alienasse, etc.

Prideaux upon suggestion that those Goods and Merchandizes were per quendam *Georgium Sydenham* nuper Capitaneum navis Anglicanæ vocat, the Black Boat apud Villam de *Padstow* in Comitatu Cornubiæ, infra corpus ejusdem Comitatus, et non super altum mare vendita et deliberata, et per ipsum *Johannem* ibi recepta, habita et tenta, et ad usum suum proprium conversa, etc. And obtained a Prohibition.

† 12 Feb. 37 Eliz. A Consultation is awarded in the same words with the other.

The same *Patrick Landy* sued *Digorius Halman* in the Admiralty, pro quinquaginta dycariis pellium Hibernicorum, libellando quod idem *Digorius* prædictas quinquagintas dycarias pellium sub nomine bonorum, rerum et mercium in manus et possessionem suas infra fluxum et refluxum maris accepisset, et sumpsisset, easdemque tunc penes se habuisset, et saltem easdem dolo alienasset, etc.

Digorius Halman upon suggestion that *Gremfield Halse*, *Nicholas Halse*, and *John Hoyel* alias *Howele* at *Plymouth*, in the County of *Devon*, infra corpus ejusdem Comitatus *Devoniæ*, et non super altum mare fuerunt possessionati de dictis quinquaginta dycariis pellium, etc. et pro certâ denariorum summa barganizarunt et vendiderunt eidem *Digorio Halman*, ac quibusdam *Johanni Martin*, et *Thomæ Crane* prædictas quinquaginta Dycarias pellium, etc. And obtained a Prohibition.

† Super eod. fil. m. 15.

§ *Vicesimo sexto Maii* 40 *Eliz.* a Consultation was awarded *T. Edwardo Anderson.*

And as before, so here in this same cause, and upon the same suggestion, a new Prohibition was awarded by the Lord Chief Justice *Popham.*

But 26 *Maii* 41 *Eliz.* a Consultation was again awarded, as in the before mentioned cause, and many more I might likewise instance in, and set forth both the Prohibitions and Consultations at large, but that I should thereby too much enlarge this Treatise.

Now as by the Writs *de Procedendo* awarded out of the high Court of Chancery, upon *Superseas* in the former Chapter set down, so by the Consultations upon Prohibitions awarded out the Courts of Common Law here set forth, I hope it is evident enough, that the Admirals Jurisdiction extendeth to the Ports and Havens, and to all things done thereon. ^h *Vide etiam quæ sunt in cap. 9. libri tertii specificata.*

§ *Sup. eod. fil. m. 17.*

^h *Infra lib. 3. cap. 9.*

C H A P. XX.

That the Ports, Havens, and Harbours where Ships do lie or ride at Anchor, are not within the bodies of Counties, but that the Jurisdiction which the Admiralty hath anciently had thereon, hath been by Act of Parliament reserved thereunto.

NOW seeing that the Ports and Havens, whereon Ships and other Vessels do ride and lie at Anchor, are not only of a different nature

nature from the land, but are absolutely consisting of the same nature with the Sea; and are sometimes more drawn in, and sometimes again further stretched out; and are from antiquity, both by ancient Authors and ancient Records, termed and called the Arms of the Sea, as indeed most properly they still are, I cannot easily be induced to think that these Ports or Havens, by being only encompassed on both sides with several Counties, and touched upon by the banks thereof, can be said to be within the body of either of those Counties, or so much as the least member, part, or parcel thereof, or so much as properly be said to be within the skirts thereof.

I must confess that many particular Statutes, and new Laws have been made, directing such and such things to be done or not done, either by Sea, or upon any Port or Haven, which by the Civil and Maritime Laws had not been formerly in the same manner, or perhaps not so fully directed: And the cognizance of such matters by the same Statutes and Laws, may seem to belong unto other Courts, as well as unto the Admiralty, by reason whereof some have often reached at all, and have strove to hold more in one hand than they could grasp in both their arms. But such things both upon the Sea, and upon the Ports and Havens, as have been anciently determined by the Admiralty, according to the Laws Civil and Maritime, have not been by such Statutes or new Laws really taken therefrom, nor were ever intended to be: But the same have been constituted and made in affirmance of the power and authority of that Court, as well upon the Ports and Havens as upon the high Seas; and have been by express words continued thereunto, and the cognizance of many such matters, by such

new

new Laws appointed, have been directed unto that Court.

I shall instance only in one Statute that sheweth the same, and then leave this subject, and betake myself unto another.

By the Statute of 32 *Hen. 8. cap. 14.* a rate was set what should be paid for the freight or portage of several particular sorts of Merchandizes from the Port of *London* to other places, and from thence to *London*; and this being a thing mutable, which could not be formerly settled for a perpetual Law, according to any Rules or Laws Civil or Maritime (though the like had been formerly done by the Admiralty *pro tempore*, as appeareth by the Inquisition taken at *Quinborow*, and the other Statutes and Articles of the Admiralty before several times mentioned) the cognizance of the excessive freight taken for transportation of these particular sorts of Merchandizes, was by the same Statute to be taken in the Courts at *Westminster*. As for the forfeiture of the double value of the freight so taken, the one half to the King, the other half to the Informer, yet the excessive rates for freight in general taken for transportation of any goods whatsoever, and from and to any Port or Place whatsoever, having been punishable by the Admiralty, that power is no more taken from that Court by this clause, then the trial of piracy, *etc.* by the Civil and Maritime Laws is from thence taken by the Statute of *H. 8. 27. cap. 4. et an. 28. cap. 15.* which giveth a power to that Court to try the same offences after another manner, which is a thing by all of both professions acknowledged.

Another clause there was contained in the said Statute, that if any Stranger, Denizen, or not Denizen, should lade on board any *English* Bottom any of their Goods,

Goods, Wares, and Merchandizes to be transported to any foreign Port, that they should pay no other Custom or Subsidy therefore, than such as the *English* paid : but in case that they did lade their said Goods, Wares, and Merchandizes aboard the Ships or Vessels of Foreigners, then they should pay such Custom or Subsidy as had been usually paid by Foreigners.

This being a thing newly by that Statute appointed, and not determined formerly by the Civil and Maritime Laws, whereby the Admiralty proceedeth ; yet was it by the same Statute provided, that, if there should be no such Ships or Vessels of *England*, or Dominions of the same, at or in the Port, Haven, or Place where the said Strangers, Aliens, or Denizens, their Servants or Factors would freight or lade their Wares and Merchandizes toward the outward Regions, that then if the said Strangers or Denizens, their Factors, Attornies or Servants, before he or they did lade, freight, or convey the said Goods, Wares, Commodities, or Merchandizes into any strange Ship or Vessel, did notify and declare the same lack or want of such *English* Ships or Vessels, unto the Lord High Admiral of *England* for the time being, or his Lieutenant, Deputy, or Deputies, if, *etc.* and did obtain his or their Certificate to be made under his or their Seal, to whom such notice or declaration was to be made of lack and want of such *English* Ships and Vessels, that then it should be lawful for them to freight and lade their said Wares and Merchandizes in any strange Ship or Vessel, at that time being in the same Port or Haven, and to pay none other Subsidies or Customs therefore but as the *English* Merchants did use, and ought to do by the Laws and Customs of *England*.

And it is enacted by the said Statute, that the Owner and Owners, Master and Masters, and other Governor and Governors of Ships, and every of them, to his or their power, and for as much as in him or them should be, shall provide that all Wares and Merchandizes which shall be by Merchants, their Factors, or Servants, or any of them, brought into any Ship or Vessel, shall be honestly and in good order saved and kept.

And under that clause it is provided, that if any Merchant, Stranger, or other, find himself aggrieved or damnified by negligent keeping of the said Merchandizes or Wares, or by long delaying or protracting of the time in taking the Voyage, by the said Owner, his Factor, Master, or any the Mariners of the said Ship, otherwise than shall be agreed betwixt the said Merchant, his Factor, Attorney, or Servant ; and Master or Owner in or by the said Charter-party ⁱ, (not being letted by wind or weather) shall and may have his remedy by way of complaint before the Lord Admiral of *England* for the time being, his Lieutenant, or Deputy, against the said Owner or Owners, Master or Masters, Governor or Governors, or his or their Factor or Factors ; which Lord Admiral for the time being, his Lieutenant or Deputy, shall and may summarily, and without delay, take such order, and give such direction therein, as shall be thought to his or their discretions most convenient, and according to right and justice in that behalf, which is in affirmance of the Civil Laws before mentioned ^k.

But Mr. *Poulton* rendreth this Statute *obsolete* : And for the first part of it, which setteth a rate

ⁱ So that the Charter-party, though made at Land, by this Statute is cognoscible by the Admiralty for the Breach of it.

^k Sup. cap. 10, 11, 12, 13. hujus lib. 2.

what shall be paid for the freight or portage of Goods and Merchandizes from the Port of *London* to other places, and from thence to *London*, I must needs agree with him, that the same may, or necessarily must be obsolete and out of use; for that since the time of making of the said Statute, the rates and prizes for Cables, Anchors, and other Tackle, Furniture, Victual, and other Provisions, have been much altered and encreased, nor indeed are, or can the Ships themselves either be built or bought at such rates or prizes as they then were, so that they cannot be let for the same freight they then were.

For the other clause of Foreigners transporting their Wares and Merchandizes in *English* Bottoms, to pay no more Custom than the *English*, whether the Customers have disused the same, and so made it obsolete, or not, I know not. But in case they have so done, I know no warrant or necessary Cause they have for so doing; but for the last mentioned Clause, that Masters and Owners of Ships shall provide, that all the Merchants Wares and Merchandizes shall be in good order saved and kept, and that the Merchant which shall thereby, or by delay, or protracting of the Voyage (without just cause) longer than the time agreed by the Charter-party, find himself aggrieved, shall and may have his remedy in the Admiralty.

¹ This is only in affirmance of the Law of that Court, and was both before the making of that Act, and hath been ever since used and practised in that Court, and cannot by the disuse of it at the Common Law (where it is not by that Act at all to be used) be made obsolete, but is by the practice and use of it, where it is appointed to be

¹ Sup. cap. 10, 11, 12, 13. hujus lib. 2.

used, held, continued, and preserved from being made obsolete there.

Now no man can say, but that this saving and keeping of Merchants Goods and Merchandizes honestly, and in good order, is clearly meant of such saving and keeping them honestly and in good order, as well whilst the Ship or Vessel remaineth in the Port or Harbour, as when she cometh at high Sea; and the delaying and protracting of time in taking of the Voyage with the next good wind, according to the time agreed on by the Charter-party, is most certainly a wrong or injury done upon the Port or Haven, and the Jurisdiction of the Admiralty in causes of this nature upon the Ports and Havens, by this Statute affirmed and confirmed.

And moreover the very breach of the Charter-party, though made at land, is by this Act affirmed to be cognoscible in the Admiralty, which bringeth me in the very next place upon that point and particular, wherewith I shall begin the next Book.

H

THE

T H E
Maritime Dicæologie;
 O R,
SEA-JURISDICTION.

The THIRD BOOK.

C H A P. I.

That all Differences arising from Contracts concerning Maritime Affairs ought to be tried in the Admiralty Court, and the reasons thereof.

HAVING been thus long upon the Ports and Havens, it is now full time to begin to think of the discharging of the Ship, and the delivery out of her lading to the Merchants, to whom the same belongeth, and for to come to the caulking, fitting, trimming, preparing, and furnishing of her with Victual, Tackle, Apparel, and Furniture, *etc.* and manning her with Seamen and Mariners for some Voyage, and taking in of her lading from the Merchants, or their Factors, to be transported in the same. In the effecting of all which several men of several Occupations, Trades, and Employments, are severally to be contracted

with, as well at Land, as upon the Port and Haven. The validity and invalidity of all which contracts, Sir *Edward Coke* would have to be cognoscible, triable, and determinable in the Common Law Courts, according to the Course of the Common Law, and not in the Admiralty Court, or according to the Proceedings, Rules, and Grounds of the Civil and Maritime Laws. But I must here likewise adventure another dispute with him upon this point.

And first I shall offer some reasons to the contrary, and then endeavour an answer unto his Arguments. And after both, I shall set forth what Laws have been made for the determination of such differences as shall arise upon such contracts, by which Laws certainly they are still to be determined.

And first I say that by Ships and Shipping, this Nation is secured and preserved from foreign Invasions, and by Trade and Commerce with foreign Nations not a little enriched; and neither Shipping nor Trade, can be upheld without the welfare of Merchants, Owners of Ships, Fitters, Furnishers of them, Mariners, *etc.*

And this welfare of the Merchant, Owner, Fitter, Furnisher, and Mariner, cannot be maintained without a settled Jurisdiction of Admiralty, regulated according to the civil and maritime Laws, settled amongst, and known unto all maritime Nations.

Because (as it is well known) all of them have dealings with such foreign Nations abroad, and such foreign Nations with them at home, who both expect and will have the same Justice meted to them, that they measure unto others; else will they both forbear to trade with that Nation, which shall

shall deny them that Justice, and likewise deny that Nation to trade with them.

Now it is most certain that the municipal Laws of this Kingdom, are so different from the civil and maritime Laws, that, if maritime Causes (be they either for freight, wages, damages done to Merchants Goods, Building, Tackling, and Furnishing of Ships, *etc.*) should be here determined by the municipal Laws of this Nation, and beyond the Seas by the civil and maritime Laws, they must necessarily receive many of them, a different; many of them a clean contrary Judgment.

To instance briefly in some few of many; if Mariners be hired to serve in a Ship, for so much by the Month, and serve divers Months in her, and the Ship dieth at Sea, and never maketh port; here the Judgment of these two Laws will be clean contrary.

Likewise, if a Ship be let to freight at a certain rate by the Month from Port to Port, and so home again, and the Ship in some of those Ports shall be embarked for some months, here the Judgments of the two Laws both for freight and wages for those months will be contrary, and upon other emergent causes from hence arising, the Judgments will likewise be, in some far different, and in other some clean contrary.

If the Merchants Wines, Oils, *etc.* be leaked out end for end, the Judgments upon Action for the freight will be different, if not contrary.

If the Merchants Goods shall be damnified by ill stowage, or careless looking to, or shall be purloined or stolen, the party not known, or if known, not able to make satisfaction here, upon Action brought by the Owner for his freight, and

by the Mariners for his Wages, the Judgments will differ very much.

If in a storm at Sea, or in any Port or Haven, the Ship and her lading be in danger, and some Goods be cast over board, for preservation of the rest, by the maritime Laws, the remaining Goods are to be cast into an average, to make satisfaction for the Goods cast over board, by which Law certain Rules, as well concerning the danger, the nature of the several Goods, and the casting them over board, as concerning the Average itself to be made, are prescribed ; which Rules are not known, or owned by the municipal Laws of this Nation, and therefore cannot that Law take cognizance thereof, and consequently upon Action brought by the Owners for freight wheresoever contracted for, in these and divers other like cases the Judgment of that Law cannot be agreeable unto the rules and grounds of the maritime Laws.

If a Mariner be hired by the month, and doth serve several months in the Ship, and afterwards desert or leave the Ship, and run away, upon Action brought for his wages, the Judgments of the two Laws will be clean contrary.

If the Mariner without leave of the Master, lie on shore, and the Ship or Goods be damnified, or the Voyage protracted ; or if the Ship be not well moored, so that for default thereof she be damnified ; or if the Mariner take up cloths, or borrow money of his fellow, and put the same in the Purser's Book, upon Action brought for his wages, the Judgments of the two Laws will differ.

If two, be they Merchants, Owners, Mariners, or Furnishers of Ships, *etc.* and those either *English* or *Foreigners*, or the one *English*, and the other a *Foreigner*, do for Freight, Tackle, or Furniture of Ships, *etc.* or by other Commerce in their sea-faring

seafaring business, become indebted each to other, upon Action brought by either of them, the maritime Law admitteth the other to alledge and prove what likewise is due to him from him that sueth at the same time, and alloweth him compensation, which the municipal Law alloweth not, but concludeth that stoppage is no payment; by which Law, if exercised in business of this nature, the absent might recover much against the party present, and he be constrained to wait his opportunity, for the recovery of what is due to him, from him that hath recovered against him, to the lessening of his Stock, and great hinderance of his Trade: And in like manner the *Non-solvent* might recover much against the *Solvent*, and he nothing at all against the *Non-solvent*, which would be very much inconvenient to all seatrading men, and a thing not known abroad.

Now these maritime Laws for maritime businesses are all grounded upon strong reasons, which if they could be here at large particularly set forth, yet would they not take away the reason whereon the municipal Laws for Land Affairs are grounded, in regard different Judgments in different things do arise from different grounds of reason: so that the Judgments upon businesses agitated upon the Land may be grounded upon reason, and yet will not that reason hold to ground the like Judgment upon in business at Sea, or upon the great waters, those being accommodated with many advantages and helps in their agitation and performance, of which these are altogether destitute.

And this will introduce a second reason why the welfare of the Merchants and other seafaring men cannot be maintained without the settling and upholding of these maritime Laws, for decision of
disfe-

differences and controversies in maritime affairs, which is because these Laws are suitable thereunto, and complete to determine all differences in businesses of that nature, which, as I conceive, the municipal Laws of the Land are not.

For maritime Causes, especially those for wages, must have a quick and sudden dispatch of Justice, the Mariners, as they come in with one good wind, so must they speedily go out with another, and not wait *Westminster Hall* Terms, to the loss of a whole Voyage, such their employment being their whole livelihood.

Nor must they commence every man a Suit according to his particular contract, to the expence of as much, if not more than his wages come to, but must as the maritime Laws allow them, commence their Action in one joint Petition to a Judge at all times settled in a readiness, and in a constant place of Judicature, where and to whom they may make their present addresses, for dispatch, according to such Laws as they are used unto wheresoever they come.

If the Mariner must have such dispatch against the Master, then must the Master have the like against the Merchant for his freight, out of which he is to pay the wages; and the Merchant the like against the Master and Owners of the Ship for damages done to his goods at sea; all which is speedily tried at one and the same time by the maritime Laws, which upon full hearing alloweth compensation, and every one hath at first his own according to proof, or confession upon their personal answers, and no more; otherwise if the Mariners shall by several Trials at the Common Law recover their full wages of the Master, and be gone, and then the Merchant recover against him likewise, or against the Owners of the Ship, perhaps

haps as much or more than their freight amounteth unto, for damage done unto his Goods, perhaps by the Mariners, who are gone, and not to be met with again, and be put afterwards to sue for their freight; this will soon cause the Owners of Ships to lay their Vessels by the walls: or if the Mariners shall recover their wages of the Masters or Owners, and be gone, and then the Owners shall recover their freight against the Merchants, whose Goods are damaged or spoiled by the Mariners, and not by default of the Ship, or by default of the Ship, and not by any neglect or fault of the Mariners, or by both, and he then put to a Trial to recover by Jury the Damage he hath sustained, he is like to have but little or no redress. If the Mariner shall have his Dispatch, and be gone (which he must have, or be undone) and the Merchant wait his Trial from Term to Term at the Common Law, then, by reason of the absence of the Mariners, can neither the Owner prove the damage to be done by meer casualty, or stress of weather at Sea; which he is not liable to make satisfaction for; nor can the Merchant prove the insufficiency of the Ship, in which case the Owner is to make satisfaction, besides many inconveniences more which might be reckoned.

Thus is not the one Law only suitable and agreeable to the maritime Affairs, and the other unsuitable and disagreeable thereunto; but the one is likewise perfect and complete for deciding of all controversies thence arising; the other imperfect, and in no wise complete for that purpose in my Judgment.

For Bills of Bummery or Bottomry (for many reasons most useful, and absolutely necessary in Sea Trade) they are likewise triable only by the maritime Laws, and can be no ways tryable at the Common

Common Law, wheresoever made, by reason the Ship only is liable to payment, which may be arrested according to the Maritime Laws, either at the main Sea, or upon any Creek, Port, or Haven adjoining upon the land, which cannot be done by the Common Law, as I humbly conceive.

So likewise contracts *de nautico fœnore, pecunia trajectitia*, or *nautica usura*, wheresoever made, are triable by the Civil and Maritime Laws, and not by the Common Law of England; and the Civil Law hath several Titles concerning these particulars, as in the Digests the Title *de nautico fœnore* in the Code, the same Title in the Novel Constitutions, the Title *de nauticis usuris, etc.* in which Titles these particulars are defined, what they are, what maketh them so to be, and what maketh them not to be so; and are likewise distinguished into several sorts, each of which is terminated and limited unto it's proper bounds, as when this *Nauticum fœnus* is distinguished into *Heteroplum* and *Amphoteroplum*, as some Authors term it; *Heteroplum cum commeatus tantum periculum fœnerator suscepit; Amphoteroplum cum et commeatus et remeatus periculum suscepit*; the one when he undertaketh the Danger of the Ship only outward bound, or only homeward bound; the other when he undergoeth the Danger both of the outward and homeward Voyage, and many other of the like nature, of which the Common Law hath not one word, that ever I could hear of, much less any rule to guide the professors thereof in the Judgment of such things.

In Bills of Sale of Ships, *etc.* though made at Land, the parties to whom the same are made, cannot (if withstood) obtain the possession thereof, but by the Civil and Maritime Law, and power of the Admiralty Court. And every Ship that is
built

built, may have many Part-Owners, and most commonly she hath, and before she can be completely built, tackled, victualled, fitted and prepared to put to sea, a great number of several tradesmen must necessarily have been employed therein, and been assisting thereunto, which cannot with any possibility, every of them repair to every Owner, some possibly being or inhabiting beyond the seas, other some in this Nation; if all in this Nation, yet oftentimes some in one place, some in another, far remote each from other, and from the place of such her building, tackling, *etc.* to make his particular contract with him for his materials, workmanship, victual, or other furniture and necessities, so that necessarily some one of the Owners, (which commonly hath not above an eighth, sixteenth, or two and thirtieth part, and sometimes one that hath no part at all) is by the rest made Master of her, and contracteth with all these several tradesmen, who regard not his ability, by reason the Ship itself is by the Maritime Laws liable for the payment of every man's particular debt, which Law must necessarily take place, or else few or no Ships be built and employed for trade; for at the Common Law I conceive they can have only their several Actions against the Master, with whom they contracted, who for the most part is not able to make satisfaction to one third part of them, and many times not to one particular man.

If one Ship shall do damage to another, either at the main Sea, or upon any Creek, Port, or Haven, the damage must be sued for in the Admiralty Court, and Judgment given according to the Maritime Laws, which prescribeth every Ship her rule, how to steer her course both going out to sea, or coming in from sea, or riding at sea, which plainly demonstrateth which Ship was in fault, by
which

which the Judgment must be regulated. And no Action can be so properly commenced at the Common Law for these Damages, for that the Owners damaged can very hardly arrest all the Owners of the other Ship, which did the damage, nor indeed can any of those Owners by that Law be liable to such arrest; but the Master, who, if *solvent*, will not come on shore, but take his employment in some other Ship outward bound, so that the remedy lieth properly against the Ship by the Maritime Laws, as hath been already said.

If a contract be made beyond the seas concerning any Maritime businesses by bill, or otherwise, the same is not cognizable at the Common Law by their own books, neither indeed, if it were, could it receive the same Judgment it shall by the Civil and Maritime Law; for a verbal Contract is not made by *Assumpsit* there, as here it is; nor in a Contract made in writing is any thing more required, or thought necessary, than the signing or subscribing of a Bill, for performance, *etc.* and sometimes the sealing, but never the delivery; nor is there any such ceremony there used or known, without which by the Common Law (as I have heard) it is nothing; so that the *English* Merchants, or other sea-faring Man's Bill, here signed, sealed, and delivered, according to the formalities of this Nation in that case required, shall, being sued in any Court beyond the seas, prove good against him, without due examinations of half the said formalities, whereas the Foreigners Bill, which is (according to the customs and usages of those parts, from which they will not by any means depart) sometimes only signed, sometimes sealed, sometimes both, but never delivered, shall for want of this one formality of delivery at the Common Law, prove void and of none effect,
and

and so the *English* man become undone by formalities of the *English* Laws, so far different from those of foreign Nations, especially the Laws Maritime, which are for the most part, if not altogether, agreeable in most places, if not in all. Many more reasons might be given, why all contracts of this nature wheresoever made, should and ought to be tried in the Admiralty Court, by the Civil and Maritime Laws, and not by the municipal Laws of this Nation; and many instances more might be given, wherein the Civil and Maritime Laws (which are common to all Nations) do differ from the municipal Laws of this, and so would vary the Judgments in Causes of the self-same nature: But that is too large a task to undertake here, and but a needless one, when some few instances may satisfy a wise man that intendeth not to quarrel. I shall endeavour here in a word to satisfy but one doubt by the way, and so proceed (according to the best of my judgment) to the answering the arguments brought against the Admiral's cognizance of these Contracts. It is objected that other Nations have their several Municipal Laws as well as *England*; and that therefore these Contracts may as well be tried by the Municipal Laws of this Nation, as by any Municipal Law of another. I answer that they have in several Nations, several different Municipal Laws, whereby they are governed within themselves, as we are here; yet are those Municipal Laws all grounded upon the Civil Law, and are no more different one from another, than one and the same lesson played upon several Instruments, in several strains; nor do otherwise differ, than as the several Interpretations of several men upon them have differed; as in many doctrinal points in Divinity various constructions have been rendered, even upon the
very

very text of the Divine Law, according to several apprehensions and opinions of several men.

^m For upon all their decisions and determinations they quote the Civil Law, and the authentic Writers and Commentators thereon, as is already said, *lib. ii.*

And as the controversies happening and arising between one Nation and another, are not to be decided by either of their Municipal Laws, that being a way to raise a new controversy, by which of those Municipal Laws the old should be decided ; no more are those controversies which do arise concerning maritime and sea affairs to be determined by those Municipal Laws, but by their Maritime Laws, by which they trade one Nation with another ; and which are generally the same, and not Municipal, as is before more fully set forth. For further satisfaction ⁿ *vide caput 10 hujus libri tertii.*

^m Sup. lib. 2. ⁿ Et vide sup. lib. 2. c. 14.

C H A P. II.

The Arguments deduced out of the Statute of the 13 R. 2. c. 5. to prove that Maritime Contracts, made at land concerning Maritime Affairs, are not triable in the Admiralty Court, answered.

FOR the taking away the cognizance of Contracts made at land concerning Maritime affairs from the Admiralty Court, the Statute of the 13th of R. 2. c. 5. the 15th of R. 2. c. 3. and the 2d of H. 4. c. 11. are urged by Sir Ed. Coke

Coke in his before mentioned 22d Chapter of his Jurisdiction of Courts^a. I shall take them in order.

^b The first of them he rendereth thus, that the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of *England*, but only with things done upon the sea, according to that which hath been duly used in the time of the noble King *Edward*, Grandfather to *Richard* the second; by which, saith he, it is manifest that the Jurisdiction of the Admiralty is only confined to things done upon the Sea. And truly taking only these words, it may very well seem so to be^c. *Sed tota lex in omnibus suis partibus diligenter prospicienda est, et incivile est (inquit Celsus) nisi tota lege perlecta, de una aliqua particula ejus proposita judicare, vel respondere.* Take we then the Statute wholly, as it is set down in the Parliament Roll in the Tower, and then, to the best of my understanding, we shall find that the mis-translation hath bred a mis-construction, and wrong interpretation thereof.

These antient Statutes were made by way of Petition and Answer, and so remain still upon the Roll; here is set down only the Answer to the Petition, but not one word of the Petition, to which the Answer hath relation. *Et cum non sit satis ad investigationem Juris si verborum superficiem teneamus, sed interius respicienda est mens legislatoris, quâ ratione motus fuerit ad statuendum aliquid (ut affirmat^d Oldendorpius) loco præcitato. Certè nullo modo sunt vestiganda jura, si verborum omnium ne quidem superficiem istam aut teneamus, aut ha-*

^a Coke li. 4. instit. cap. 22.

^b Coke li. 4. instit. cap. 29.

^c Oldendor. de formulâ investigandæ actionis c. quomodo investiganda sit actio. L. in civile F. de legibus.

^d Oldendor. loco præcitato.

beamus, nec quovismodo est intelligenda mens legislatoris, quâ ratione motus fuit ad hoc statuendum, dum abscondita sit petitio, super quâ fundatur statutum. Scire leges (inquit Celsus) non hoc est verba eorum tenere, sed vim et potestatem habere. l. scire leges F. de legibus^c. Quodcunque igitur negligere est legum vim potestatemque destruere. I shall therefore first set down both the Petition and Answer as I find them in the Tower Roll, and then under correction examine the true construction and interpretation of them, according to the best of my ability. The words are these :

Item, prient les comes que come les Admirals et leur Deputies tiegnent leur Sessions en diverses places deins le Royalme, si bien deins franchises come de hors accrochant au eux plus grant poaire que a leur office nappertinent en prejudice de nostre sieur le Roy, et le come ley du Royalme, et grant emblemissement de plusours diverses Franchises en destruction et empourissement del^d comen people que plese ordaine et establer leur poaire en cest present Parlement quils ne soy mellent nempriengnent sur eux connisances de nulls contractz covenances regraters, etc. que conques les quelx divent et purrant estre terminees devant auter. Jugges nostre sur le Roy deins les quatre miers Dengleterre deins Franchise et de hourse, etc. R. le Roy voit que les Admirals et leur Deputies ne soy mellent de fore en avant de null chose fait deins le Roylme mes solement, de chose fait sur le meere, solonc ce que ad estre duement use en temps du Noble Roy Edward aiel nostre sur le Roy quorest. The first part of the Petition, having set forth that the Admirals keeping their Sessions in divers places in the Realm, as well within the Liberties, as without, had incroached to themselves greater power

^c F. de legibus l. scire leges.

m. 41.

^d Rot. Parl. an. 13 R. 2.

than belonged unto their Office, *etc.* Then so much of the prayer of the Petition as is granted, consisteth in these words :

« *Qu'ils ne soi mellent nempregnent sur eux confiances de nulls contracts, covenances, regrates, etc. que con ques les ceux divent et purrant estre terminees devant autres Jugges nostre sur le Roy, deins les quatre miers d'Engleterre deins Franchise et de borse.* They pray that the Admirals may not so meddle or encroach upon the Cognizance of Contracts, Covenants, Regraters, *etc.* determinable before other the King's Judges, within the four Seas of *England*, within franchise and without. The rest of the Petition is not granted, but tacitly denied, and this part is thus answered by the King.

Le Roy voit que les Admirals et leur Deputies ne soi mellent, etc.

This Sir *Edward Coke* positively without any relation to the Petition, rendreth in the words before set down, *viz.* The Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of *England*, but only with things done upon the Sea ; which *Poulton* more truly rendereth thus : But still without relation to the Petition, that the Admirals and their Deputies shall not meddle from henceforth, of any thing done within the Realm, but only of a thing done upon the Sea ; rendring of, for *with*, which is the more proper signification of *de*, and will as I conceive bring home the true construction of the Answer, with relation to the Petition, to which it hath, and necessarily must have reference.

It hath been affirmed unto me by some professors of the Common Law, that the King upon a Petition never grants more than is desired by the

Petition, and that that which is granted more than is desired, is void in Law ; but that I leave to the determination of such as are of their own profession ; but the same thing hath been noted unto me as a rule from many expert Recordmen, more especially from my old deceased friend Master *W. C.* not long before his death, then above eighty years of age, *viz.* that the King in Parliament never granted more than was asked, many times less ; who affirmed that this in his younger time he had taken for a rule from those that were then ancient. But this Answer here being set down positively alone, without the Petition, or any relation thereunto, hath (as it seemeth to me) made the Grant far larger than the request, which must not be, but must be reduced thereunto, and receive a Construction, with a due relation to it.

It being complained of in Parliament that the Admirals and their Deputies had encroached, as is before set forth : It is desired by the Petition that they and their Deputies may not meddle with Contracts, Covenants, or Reqraters, *etc.* triable before the other Judges : It is answered, that henceforth they shall not, of a thing done within the Realm, but of a thing done upon the Sea.

The Construction of the Answer, with relation to the Petition (which as I humbly conceive must not be separated by any Logician) will plainly be this.

The Admirals and their Deputies shall not henceforth meddle with any Contracts, Covenants, *etc.* of, or concerning any thing done within the Realm, but only of Contracts, Covenants, *etc.* of, or concerning things done upon the Sea : So that we plainly see an Answer to a Question, or Petition turned into a positive Thesis, without relation to the thing, whereof it is an answer, is easily

easily turned into another sense never intended; and this answer to a Petition, translated alone without the Petition, and put positively, as the translation of the Statute putteth it, doth seem clearly to take away from the Admiral the Cognizance of all Contracts, and Covenants whatsoever made within the Realm, whereas taken with the relation to the Petition, it as clearly confirms the Cognizance of Contracts of, or concerning things done at Sea unto him: For as the answer to the Petition doth grant that the Admiral shall not meddle with Contracts of things done within the Realm, so doth it reserve the Contracts and Covenants of things done upon the Seas unto him: And the words, as I said before, can imply no other thing, to the best of my understanding.

For the following words, *Solonc ce que ad estre dument use en temps du noble Roy Edward aiel nostre sur le Roy quorust.* Poulton (having thus translated the Answer, without mention of any one word of the substance of the Petition) rendereth barely thus: As it hath been used in the time of the noble Prince King *Edward*, Grandfather of our Lord the King, that now is: As if this positive Thesis, by him extracted out of that, which was the King's Answer to a Petition, and had only a relation thereto, had been so used in *Edward* the third's time; whereas the words are a restriction to the answer, and bindeth up the Law to what was used in that King's time; for *Solonc*, which in true French is *Selon*, signifieth *secundum* or *juxta*, according or agreeable, so that if the Answer could be taken positively without relation to the Petition (which as I conceive it cannot be) yet these words *Solonc ce que ad estre dument use, etc.* had restrained and limited it, not to exceed or extend it self to any thing that was not according or

agreeable to what was duly used in *Edward* the third's time: So that under correction, by that strained construction and interpretation that is made of the former part thereof, the Admiral is not barred the Cognizance either of Contracts, Covenants, or any thing else, which he had Cognizance of in that King's reign. Take that part of the Petition wholly, and the King wholly grants it, but no more.

By the Petition it is desired that the Admirals may not meddle, nor encroach upon the Cognizance of Contracts, Covenants, Reqraters, *etc.* cognizable before the other Judges; the King granteth it, putting a difference between the Contracts, *etc.* of things done at Land, and of things done at Sea, and by this restriction referreth to what Covenants, Contracts, Reqraters, *etc.* were duly used and tried in the Admiralty in *Edward* the third's time, and those he thereunto reserveth the Cognizance of, but no other. And now it cometh to be mainly considered, whether Contracts and Covenants of and concerning Maritime businesses, though made at Land, were cognizable in the Admiralty Court, or at the Common Law in *Edward* the third's time.

And it seemeth plain unto me that in *Edward* the third's time, the Admiral had the Cognizance of all Maritime Causes, by the words of their Patents. I will give but one instance of the Patent of *Robert Herle*, already cited, *p. 3. l. 1. c. 1.* in which you shall find these words: *Dantes ei plenam tenore presentium potestatem, querelas omnium et singulorum de his quæ officium Admiralli tangunt, et cognoscendi in causis maritimis, et justitiam faciendi, etc.*^h Now if Bills of Botomry (whereby Ships only are liable to the payment of the debt contracted upon them) though contracted for at land,

^h Sup. l. 1. c. 1.

or if freight for the service of Ships at sea, or Mariners wages, for their service at sea likewise, for which either the Ships or Contracters are liable at the parties Agent's choice, though the said Contracts were made at land; and the like businesses which have their first rise from somewhat done at sea, are not maritime causes, I would gladly know what causes can be called maritime; for sure I am, that *maritimus* is either ἐπιθαλατῆδος παρῳλί or that which is on the Sea-coast, or nearest the Sea, which the *French* render *ou demur aupres ou sur le bord de là mer*; and the *Spaniard* *cerca de la mar*. Or it is ἐπιθαλάσσιος παρῳλί, belonging to the sea, take which signification of the word you will, and the before mentioned causes will be *causæ maritimæ*; if for on the Sea-coast, or near the Sea, then the Contracts in such causes, tho' they be made at land, are made on the Sea-coast, in the Sea-town, or near the Sea. If for belonging unto the Sea, then these Contracts (wheresoever they are made) are made for things to be agitated and done at sea, and for things that cannot be done without the sea; and such Contracts they are, that if the sea was not, would never have been made; and therefore these Contracts must necessarily belong unto the sea, and so must those causes which arise from them; and must as necessarily be those *causæ maritimæ*, which the Admiral is to take cognizance of. And I am confident that it cannot be shewed, that the Common Law had any cognizance of these or the like causes in *Edward* the third's time; or that these or such like causes, were the causes wherein the Admirals are said then, or after, to have encroached upon the King's Courts: Nor that the Common Law had then, nor hath yet any positive Laws, rules, or grounds for the decision of causes of this nature. And clear enough it is, that even in *Ed-*

ward the third's Reign (to which this Statute hath reference) many Laws and rules were confirmed, and many made for direction of the Admiral in the decision of Causes of this nature (as by several antient Records shall hereafter appear) by which I doubt not but that it will evidently appear, that the cognizance of these Contracts concerning Maritime affairs, wheresoever made, were then duly used in the Admiralty Court, and did properly thereunto belongⁱ.

ⁱ *Infra cap. proxim. et sequent.*

C H A P. III.

That by the antient Statutes of the Admiralty, and by the Laws of Oleron, it appeareth that Contracts made at land of and concerning Maritime affairs, were cognizable and triable in the Admiralty both before, and even in the time of Edward the Third, whereunto the last mentioned Statute maketh reference.

IF Contracts and Covenants of and concerning Maritime busineses made at land were cognizable in the Admiralty in *Edward* the third's time, then doth the last before mentioned limitation of the Statute of the 13th of *Rich.* 2. 5. continue them triable there still, taking the construction of the Statute to be with relation to the Petition, or without^a.

But before that I go about to shew that they were then cognizable there, I shall make it first

^a *Stat. Rich. 2. 13. 5.*

appear, that they were there triable long before his time, and so come to the cognizance of them in his time.

In the beginning of that antient authentick book, called the *Black Book of the Admiralty*, whereof I have formerly made mention, in which all things therein comprehended are ingrossed in Vellum, in an antient character, which hath been from time to time kept in the Registry of that Court, for the use of the Judges of the Admiralty successively (and is as free from suspicion of being corrupted or falsified, as the Records of any Court whatsoever) are set down the ancient Statutes of the Admiralty, with directions how, in what manner, and of what things every Admiral shall enquire, at every Port, and Haven, after his being made high Admiral: Where amongst other things, I find an Ordinance made by *Edward the first, at Hastings*, as is plain by the Ordinance it self, whereby all Stewards, and Bailiffs of Manors, upon the Sea-coasts are forbidden to meddle with any plea, or try any cause whatsoever, touching or concerning any Merchant or Mariner, whether by deed or charter party of Ships, or other things, amounting to the sum of twenty or forty Shillings. The words are these:

¹ *Item, ordonne estoit a Hastings par le Roy Edward le primer et ses seigneurs que coment divers seigneurs avoient diverses franchises de trier plees ou Ports, que leur seneschaulx de Baliffs, ne tendroient nul plee sil touch Merchant ou Mariner tant par fait come par chartre de nefz Obligations et autres faitz comment la somme amont que a xxs, ou a xls, et saucun est endite qu'il a fait le contraire et de ce soit conviēt, il avera mesme le Judgement come*

¹ Li. nigro Admirallitatis, p. 29.

defus est dit. They that shall do to the contrary, and shall be thereof convict, they shall have the same Judgment as is aforefaid, which is a Year's Imprisonment, set forth in the next preceding Article, for a Mariner's breaking an arrest, made upon him, for to serve the King in any Ship.

And the same Ordinance concludeth this: *Item chacun contract fait entre Marchant et Marchant, ou Marchant ou Mariner outre la mer ou dedens le Flod markes sera trie devant l'Admirall et nemient ailleurs par l'ordonnance dudit Roy Edward, et ses seigneurs.* Also every Contract of a thing done between Merchant and Merchant, Merchant or Mariner, beyond the Seas, or beneath the Flood-mark, shall be tried before the Admiral, and nowhere else, by the Ordinance of the said King *Edward* and his Nobles.

And in another thick covered Book with great Brass Bosses, kept in the Registry of the said Court, wherein are set down some things of Antiquity, and likewise some things of latter times, I find this very Ordinance set down in exprefs words, agreeing both with the former part and with the Addition thereunto.

Wherein I likewise find an Article of Enquiry in Latine, containing the whole substance of this very Ordinance, in these words: *Item inquiratur de hiis seneschallis et ballivis quorumcunque Dominorum per costera maris Dominia habentium, qui tenent, vel tenere usurpent aliquod placitum mercatorum, vel marinariorum concernens, excedens summum quadraginta solidorum; pœna qui inde presentati fuerint et super hoc convicti pœnam quinque librarum et judicium subibunt, et hæc est Ordinatio Edwardi primi, apud Hastings regni sui Anno secundo.*

Item quod quilibet contractus initus et factus inter Calcatorem et Mercatorem, Marinarium, aut alios
ultra

ultra mare, five intra fluxum maris, vel refluxum vulgariter dictum Fludd-marke erit triatus et terminatus coram Admirallo, et non alibi, per Ordinationem prædictam.

^m And by an Inquisition, long since translated out of an ancient *French* Copy into *Latin*, by one *Roughton*, and Ingrossed in the said black Book, I find this whole Article in the self same words, save that instead of these words *pœnam quinque librarum et iudicium subibunt*, the words are these: *Eandem pœnam ut super et iudicium subibunt*: which agreeth with the Ordinance itself, which referreth to the punishment in the preceding Article thereunto: which punishment is (as is set forth before) a whole year's Imprisonment.

ⁿ Now that this Ordinance and this Article only forbiddeth Stewards, and Bailiffs of Mannors, for meddling with such Maritime Contracts, and Causes, it is because that at that time, there were no other Courts that could encroach upon the Admiralty; for the King's-Bench was not settled in any constant place, but followed the King, wheresoever he went; and the Justices in Aire, and Justices of Assize being *Itinerantes*, and sometimes at home, and sometimes in their Circuits, and sometimes in one place, sometimes in another, and so in no certain place, and least of all in any Ports, or Haven Towns, never did nor could take Cognizance of Maritime Contracts, or Causes, which always required a most sudden Dispatch, and could not expect their uncertain coming; nor was the Court of Common-Pleas then settled; for it was resolved to be settled in some constant place, but in the ninth year of *Henry the III^d*, all which will appear, by what I have formerly set down.

^m Rough. Ar. 38.

ⁿ Sup. li. 1. c. 2.

° Now

° Now that these Contracts and Covenants concerning Maritime Affairs, though made at Land, were continued cognoscible in the Admiralty Court, in *Edward* the III^d's time, as well as before, will likewise plainly appear thus.

¶ The Laws of *Oleron*, which were brought into this Kingdom by *Richard* the First, were absolutely and completely settled, and established in this Nation by *Edward* the Third, in the twelfth year of his reign, as will plainly appear, by that ancient Record of the *Tower*, intituled, *De Articulis super quibus etc. Anno Regni Regis Edward. III, 12°*, which is already set down, which I will here repeat, because I will not turn you back to the other place, being there made use of to another purpose.

Item ad finem quod resumatur et continuetur ad subditorum prosecutionem forma procedendi quondam ordinata et inchoata per avum Domini nostri Regis, et ejus concilium ad retinendum et conservandum antiquam superioritatem maris Angliæ, et nos officii Admirallitatis in eodem quoad corrigendum, interpretandum, declarandum et conservandum leges et Statuta per ejus antecessores Angliæ Reges dudum ordinata ad conservandum pacem et justitiam inter omnes gentes Nationis cujuscunque per mare Angliæ transeuntes, et ad cognoscendum super omnibus in contrarium attemptatis in eodem, et ad puniendum delinquentes et damna passis satisfaciendum, quæ quidem leges et Statuta per dominum Richardum quondam Regem Angliæ in reditu suo à terrâ sanctâ correctæ fuerunt, interpretata, in insulâ Oleron publicata, et nominata in Gallicâ Linguâ, la ley Oleron.

These Laws thus brought in and thus established for the direction and use of the Office of the Ad-

° *Secunda pars hujus Capitis.*

¶ *Super li.*

miralty

miralty (as its plain they were by the very Words of this Establishment, *Et nos officii Admirallitatis in eodem, etc.*) were many of them of no use at all, if the Admiral had not, at, and after the time of the bringing them in, or were not at, and after the time of the settlement thereof, to have had the Cognizance of Contracts and Covenants made at Land, of and concerning Maritime affairs; for many of them do set forth and declare, what Judgment is to be given by the Admiral upon such Covenants and Contracts; and the very first Judgment setteth forth in what case the Master of a Ship, (being come to a strange Port) may there sell the Ship, and in what case he may not, and in what case he may pawn some of his tackle, and in what not; all which must needs be done by Contract or Covenant, and he must necessarily seek his Chapman at Land, and not at Sea. And who should have the Judgment of such Contract, whether it be good, or a void Contract, but the Admiral who hath his direction by these Laws, how to judge, I know not. The words of the Judgment are these:

¶ Premièrement leu fait ung homme Mastre d'une nef la nef est a deux hommes, ou a trois la nef, seu part du pais dont ille est et voyent a Bordeaux, ou a la Rochelle ou alles, etc. se frette pour aler en pays estranges, le Mastre ne puet passe vendre le nef sil na commandement ou procuration des Seigneurs, mais sil a mestier de despens il puet bien mettre aucuns des apparilz exgaige par conseil des compaignons de la nef et cest le Jagger en ce cas.

Again, a Master of a Ship hireth Mariners in the Town where the Ship is, and by their Agreement, Contract or Covenant, some are to be at

marinage, others at whole pay in money, which done, the Ship can find no freight to go to the place where the Master intended to go, and whither he hired his Mariners, but must go further, or not so far. This no doubt is contracting and covenanting at Land for a Maritime Voyage, which cannot as, I believe, be by the common Law, according to the Maritime Rules decided, nor hath it any Rule of itself to judge it by, whether any of the Mariners so hired are bound to perform this new Voyage or not, which if the Professors thereof shall undertake, I much fear that in this very first question they must judge clean contrary to the Laws of the Sea, or clean contrary to the grounds and principles of their own Law, which are very good and very reasonable in the Land Affairs ; but the reason thereof will not hold in Maritime businesses, as I have said before. ¹ And excellent Authors there be written by Civilians, which give exact reasons of the differences of judgments in land businesses and sea affairs. 2. Whether those that are hired at marinage, or those that are hired at full deneirs are the rather bound to perform the Voyage. 3. Upon what terms those that are freest are bound, and must perform the same. 4. What is to be done in case the Voyage prove shorter or longer than that which was agreed for. The Judgment upon these particulars is set down briefly in the twentieth Judgment of *Oleron*, and is by other Civil Law Authors amplified, with express reasons of every particular. The words of the Judgment in the Laws of *Oleron* are these :

Ung Maistre d'une nef loue ses Mariners en la ville dont la nef est les loue les ungs a Marinage les autres

¹ Supr. li. rito secundo, cap. 1, 2.

² L. Oler. jud. 20.

à deniers

à deniers ilz veoient que la nef ne puet trouner frets & venie en ses parties et leur conuoient alzir et plus loingnes ceulz qui vont a marinage la doivent servir, mais ceulx qui vont a deniers le maistre est tenu a leur croistre leurs loyer veue par veue et corps par corps par la raison qui les avoit louez et a termine lieu et cilz viennent plus pres que leux covenant la pris il doit avoir son loyer tout au long, mais il doit aidera rendre la nef la ou il la prist, se le maistre veult a la venture de Dieu, et cest le judgement en ce cas.

Other Judgments there be which determine in what cases the Master of a Ship may sell part of his Merchants Wines, or other goods, without breach of his Charter-party, or contract of a freightment, and in what case such his sale or contract for such wines or goods (which must necessarily be made at land) shall be good and sufficient in law.

And such cases as these the Admiralty adjudgeth sometimes at one, two, three, or four hours warning, or in a very short time; for if such Cases should wait Terms or Courts, many a Voyage would oftentimes be lost, to the extraordinary great damage both of Merchants, Owners, Masters, and Mariners of Ships.

But for Contracts and Covenants between the Master of a Ship and his Mariners, for their wages, some have thought them to be upon sufferance allowed by the Common Law unto the Admiralty, for the quick dispatch of Mariners, and they should not be enforced to bring several Actions at that Law; but had it been at the allowance or sufferance of that Law, another reason might have been added of such their allowance or sufferance, viz. because these poor men seldom have any money to expend in Suit, for obtaining of so small a sum, as commonly their wages severally amounteth

amounteth unto, whereas in the Admiralty they are, and always have been heard summarily without payment of one penny, for the Judge's extraordinary pains in the hearing, and determining causes of this nature ; and an Advocate expecteth but a single fee from them all, be they never so many, which oft-times amounteth not to two-pence a piece.

But we see plainly, that such manner of Contracts belonged unto the Admiralty Court by Law established and confirmed in the twelfth year of *Edward* the third, and so did all Contracts and Covenants between Merchants and Masters, and Owners of Ships for freight or the like.

A Master of a Ship lets a Ship to freight to one Merchant or more, and they covenant and agree, that they shall so lade, that the Ship may be ready to depart by a certain day, and they fail, and have not fully laden by that time, so that the Master loseth his time, and oft-times his weathering ; this is a Contract or Covenant made at land ; yet hath the Common Law no law or rule that ever I could learn, to judge the same by : 1. Whether in this place the Master may contract with any other Merchant for a new freight, or not. 2. What lading boarded firmeth the Contract, and holdeth it on, and what freeth it. 3. In case the Contract be held firm, how many days after the term is expired, bring the Merchants within the compass of the law to make satisfaction. 4. What satisfaction is to be made, and in what manner. 5. How such satisfaction being made, the same is to be divided between the Master and the Mariners. And 6. How such an Accident firmeth or altereth the Contract made between the Master and the Mariners. If therefore, in Sea affairs there were not Sea Laws and Rules to limit and regulate such
general

general Contracts, but that they should be held broken for defect of performance of every particular circumstance at the Common Law, very many and great Inconveniencies would follow in Cases of this nature, because as the land is more firm than the sea, so are not land busineses so subject unto various events, as the sea affairs are, but are at a far more certainty for the performance of particular circumstances, than the sea affairs possibly can be; and yet it will not be denied, but that some Contracts made at land, concerning Land busineses, are against the Law, some void by Law, and some must be regulated by Law, much more must such as concern Maritime affairs be regulated by such Laws as are most proper for them, which are the Maritime Laws; and if these Laws shall not be observed and followed in this Land and Nation, as well as in all others, the *English* Merchants, and the *English* Mariner and Owners of Ships^a will be tied to such inconveniencies as the Merchants, Mariners and Owners of Ships of no other Nation are, to their extraordinary disadvantage; but this is but a digression, which hath been spoken of more at large elsewhere, and therefore we will return to the matter.

As the twentieth Judgment of *Oleron* is set down for a guide and direction of the Admiral and Judges of the Admiralty in the particular Contracts before mentioned therein between Masters of Ships and Mariners; so doth the twenty-second Judgment set down a rule, to guide and direct them in the Judgment of Contracts, and Covenants made between Merchants and Mariners, and Owners of Ships in the case above specified, which is in some particulars of that case plain enough, yet in

^a Super. lib. cap.

all it cannot be perfectly understood, but by such Civilians as are very well vers'd in other both ancienter and subsequer Author's, who have wrote of the Maritime Laws ; the words of this Judgment I shall here set down.

** Ung Maistre frette sa nef a ung Merchant et est devise entre eux et im's ung terme pour charger la nef et les Mariners par le space de xv jours ou de plus oultre et aucune foiz en pert le Maistre son fret, et sa messon par default dung Merchant, le Marchant est tenu à lamender, et in celle amende que sera faite les Mariners auront le quart et le Maistre les trois parties, par la raison qu'il trouve les costes ; cest le Judgement en ce cas.*

This Judgment is without question a plain direction to the Admiral and Judges of the Admiralty, what to determine in some of the particulars above-mentioned, upon a Contract made at Land for freight of a Ship, which serveth sufficiently for my purpose, to prove that the Admiral and Judges of the Admiralty had both before, and in *Edward* the third's time (who in the twelfth year of his reign established these Laws) Cognizance of Contracts made at Land between Merchants and Mariners, and Owners of Ships for freight.

And to this Judgment, which sheweth what is to be determined in case of freight, where the Merchant is in fault or delay, I shall add, and here set down one Judgment more, which sheweth what is to be determined, when the Mariner, or any of the Owners are in default or delay : As if a Merchant do take to freight by Contract or Covenant, any Ship lying in any Port or Haven, and it falleth out that the Ship is stopped or stayed, through default of the Mariner, or any of his

* Ol. Jud. 22.

Owners, and how and in what manner this Contract or Covenant holdeth, or holdeth not; and these are the words of the Judgment.

¹ *Item ordonne est et estably pour loy et custume de la mer, que se ung merchant a frette une nef en quelque Port que se soit et a viengne, que le nef soit empeschee pour default du maistre ou du Seigneur a cellui a qui la nef est, le merchant qui avoit frette la nef puet requirra le maistre en telle manier: Je te requier que tu mettes mes biens ou mes denrees en la nef et le maistre dit que la nef est empeschee de par aucun Seigneur le Merchant qui avoit frette la nef se puet partir du covenant et affrettment du dit maistre et affretter a son choys ailleurs sans ce que soit tenu au dit maistre de rien amender, et se le Merchant ne trouve frette il puet bien demander au maistre ses dommages pour la raison qu'il la mye tenuz ses Convenants et affrement dessus ditz, et le maistre lui doit amender, et cest le Judgement en ce cas.*

² Several other Judgments there be, which (when a Ship is so taken to freight by any Merchant) do set forth several duties to be performed, both on the Merchants part, and likewise on the Masters and Mariners parts, which I shall not here set down, because it is not my drift, or purpose to shew what the laws of the Seas are, but only to shew that by the laws of Oleron established in Edward the third's time, Contracts for freight of Ships, and Mariners Wages were cognoscible in the Admiralty Court, and these Laws are left as guides and rules for the Admirals and Judges of the Admiralty to determine such causes by.

Hence it is plain to my understanding, that the Statute of Richard II, though taken in the most general construction, without reference or relation

¹ Ol. Jud. 25. ² Ol. Jud. 26. jud. 29, et 30. jud. 31.

to the Petition (which I cannot by any means be drawn or persuaded to allow) yet being restrained with this restriction *Solonc ce que ad estre duement use en temps du noble Roy ail nostre quorust*, doth no ways at all take away the Admirals, or the Court of the Admiralty's Cognizance of any thing whatsoever was cognoscible before them, in *Edward* the third's time, and so consequently doth it not take away the Cognizance of Contracts for freight, nor wages, nor are they any of the encroachments complained of in the Petition, whereunto that Statute is an answer.

And divers other Judgments there be amongst these Laws of *Oleron*, which determine Contracts made between the Masters of Ships and Pilots, or Loadsmen, whether the same be made at land or elsewhere, for the conducting of Ships into Ports and Havens, or from one Port or Place to another ; I shall only quote some two or three of them and leave the rest.

^a *Item se ung lodeman prent charge sur luy de amener une nef en aucun port et avient qu'en sa defaute la nef soit perie, etc. marchandises endomagees, etc.*

^b *Item estably est pour custume de mer que se une nef est perdue par la defaute de une lodeman, etc.*

Ung bachellor est lodeman de une nef et est loue a la mener jusques au port ou len la doit discharger, etc. And some others there be of the same nature.

And the ancient Statutes of the Admiralty and Laws of *Oleron*, before mentioned, established by the said King *Edward* the third, in the twelfth year of his reign, as is before declared, having

^a Oler. Jud. 33.

^b Oler Jud. 24, et 34.

settled^c the cognizance of such Contracts, and Maritime Causes in the jurisdiction of the Admiralty, he granteth the same to his Admirals by their Patents (as appeareth by that Patent before mentioned, granted unto *Robert Herle* in the thirty-fifth year of his reign.)^d But (as it seemeth) some in those times having opposed, or at leastwise afterwards interrupted this settlement, the same King caused an Inquisition to be made at *Quinborough*, the second day of *April* in the forty-ninth of his reign, before *William Latimer* Chamberlain of *England*, and Warden of the Cinque Ports, and *William Nevill* his Admiral of the *North*, by near twenty of the most able and best skilled seafaring men of several Port Towns of this Nation, of and concerning the ancient customs of the Admiralty, to be held firm, and continued according to their Verdict, as I have at large set forth in the twelfth chapter of the second book of this treatise^e.

I shall therefore proceed to shew, that by the said Inquisition, it plainly appeareth, that Contracts made at land of and concerning Maritime affairs, were in *Edward* the third's time cognoscible and triable in the Admiralty Court.

^c Supra.^d Edw. III.^e Sup. li 2. cap. 12.

C H A P. IV.

That by the Ancient Inquisition taken at Quinborough in Edward the third's time, it appeareth that the cognizance of Contracts made at land concerning Maritime Affairs belonged then and before unto the Admiralty Court.

IT hath been an antient Rule or Maxim amongst Merchants, Owners of Ships, Masters of Ships, and all sorts of Mariners and Seamen, that *Freight is the Mother of Wages*; therefore are the Mariners wages to be paid out of the freight the Ship hath earned; and the damages done to the Merchants goods by the Mariners, or sustained through their negligence, is to be paid out of the freight; and what is so paid out of the freight, is to be deducted out of their wages; and by this rule all are necessarily cognoscible in one and the same Court or Judicature; and the damage done at sea being cognoscible in the Admiralty, and no where else, that cause must necessarily carry the other two along with it, both which are likewise there triable, both for this and divers other reasons in the first chapter of this third book exprest^a. But I am likewise here to shew, that by the Inquisition taken at^b *Quinborough*, in *Edward the third's* time, for direction of the Admiralty Jurisdiction, as is already set forth, the same were both then and before cognoscible in the Admiralty Court.

By the fourteenth Article of that Inquisition, if a Ship be let to freight for several prices or rates of affreightment, the whole freight shall be cast

^a Sup. li. 3. c. 1. ^b Sup. cap. of the second book.

up rateably, and the Mariners paid out of the whole; so that the Admiralty is to take cognizance of the several contracts of affreightment made by the Merchants before the lading of their Goods, and to cause the Mariners to be paid their wages they had contracted for before their entering into their service on Shipboard, according to the said agreements of affreightment: The words of the Article are these.

c Item se une nef soit affreta a divers pris de fretters, lentier de tout laffret sera accompte ensemble et les portages paieez aux mariners selon lafferant du fret de cbunn tonnel lun accompte come dit est droitement avec quis lautre.

Divers rules there are in the Maritime Laws for direction, whether, and when Mariners are to have their wages contracted for, when not, when all, when some part thereof, and what part thereof, which are guided by the rates of payment of freight. I shall instance but in one more out of this Inquisition, and that shall be out of the very next article to that before set down, which followeth in these words:

Item une nef soit affrettee deurs quilque' lien que soit et ait certain jour limite de paiement de son fret en endenture, ou autrement les Mariners seront paieez de la moitie de lieurs louyers a la charge de la nef, et de lautre moitie quant mesme la nef sera venus en lien de sa dischARGE se le maistre ou le seigneur de la nef ny veult come dit est avoir la nef lostel et de leure seront ilz paieez quant la moitie du dit fret est receu^d.

It being plain then that this Inquisition was in Edward the third's time, taken for the direction of the Judicature of the Admiralty, it is as plain

^c Inq. apud Quin. capta art. 14.

^d Ibid. art. 15.

by these Articles, that in his time the Admiral had cognizance of Contracts made for freight of Ships and Mariners wages, wheresoever the said Contracts were made, and then the Statute of *Richard the Second, cap. 13.* being shut up with this clause of *Solonc ce que ad estre duement use en temps du noble Roy Edward ail nostre,* doth no ways take away the cognizance thereof from the Admiralty, which is a thing I cannot too often repeat.

Neither resteth this Inquisition here, but what matters were cognoscible, are to be determined before the Admiral by the Laws which I have in the former chapter quoted out of the Laws of *Oleron*, and by divers others of them, as well as those there quoted, and by divers other Articles in the foregoing part of this Inquisition, being then full settled and established. It is towards the latter end of this said Inquisition provided, and care is thereby taken, that neither those matters, nor any of that nature should be elsewhere in any other Court meddled with: I shall only take two or three Articles together, which appoint, that at all Admiralty Sessions enquiries shall be made of all such as shall implead or sue any man in any other Court than the Admiralty, for any matters or things there cognoscible or determinable, either by the foregoing Laws or Articles, or otherwise: And those are the 51, 52, and 53 Articles of this Inquisition, which follow in these words:

^e *Item soit enquis de tous ceulx q' empledent aucun home a la commune loy de la tre' de chose appartenant dancien droit a la loy marine.*

^f *Item soit enquis de tous juges qui tien'et devant eulz aucuns plets appartenants par droiture a la court de l'admiralte,*

^e Inq. Quin. art. 51.

^f Inq. Quin. art. 52.

^h *Item*

§ *Item soit enquis de tous ceulz qui distourbent les lieutenants de l'admiral ou autres ses ministres de faire duelement execution de ses mandemens.*

These Articles are not only for the enquiry of all such as have impleaded any man at the Common Law of the land, for any thing appertaining of ancient right unto the Maritime Law, but likewise of all such as have held before them any pleas of right belonging unto the Court of the Admiralty, according to the Laws of *Oleron*, and the severall Articles of this Inquisition, both settled and confirmed in the time of his Reign; and to enquire of all such likewise which have at any time disturbed the Lieutenants of the Admiralty, or any other of the Ministers of the Court in the due execution of their Mandats and Warrants.

I might here proceed further, to shew that by that other Inquisition translated out of old *French* into *Latin* by *Roughton*, and set down in the before mentioned black book of the Admiralty, it likewise plainly appeareth that Contracts made at land concerning Maritime affairs were then, or before that time, triable in the Admiralty Court: For whether that Inquisition was taken in *Edward* the third's time, or before, doth not appear, the same bearing no date, and in that regard likely to be far more ancient; but because the same is in most particulars agreeable with this Inquisition, and in regard I have touched upon it already in the chapter^h where I have argued the self same matter from the Laws of *Oleron*, I shall here pass it over, and pass unto the other Statutes which are instanced in against the cognizance of matters of this nature in the Admiralty Court.

§ Inq. Quin. art. 53.

^h Sup. l. 2. ca. 10.

C H A P. V.

The Argument deduced out of the Statute of the 15th of R. 2. cap. 3. to prove the Contracts made at land concerning Maritime affairs, are not cognoscible in the Admiralty Court, answered.

I Am now come unto the second Statute urged by Sir *Edward Coke*, against the Jurisdiction of the Admiralty, which howsoever he took to be plain for his purpose, yet well weighed, and rightly considered from the original, in my judgment, maketh clearly against it, and confirms the construction I have made of the Statute of the 13th of Ric. 2. in the second chapter of this Book ^a.

I shall first set down the Statute it self, as he rendereth it, then as *Poulton* translateth it; and lastly, as the original truly hath it, which is worthy the observing; and then come to set forth the true meaning and sense thereof, according to my best understanding.

^b And first it is by him thus rendered, That the Court of the Admiral hath no manner of Cognizance, Power nor Jurisdiction of any manner of Contract, Plea, or Querele, or of any other thing done, rising within the Bodies of the Counties, either by Land, or by Water, and also of Wreck, of the Sea: But all such manner of Contracts, Pleas, and Quereles, and all other things rising within the bodies of the Counties, either by Land, or by Water, as is aforesaid, and also wreck of the Sea, shall be tried, determined, discussed, and remedied by the Laws of the Land, and not be-

^a Sup. cap. 2. hujus lib.

^b Coke li. 2. Inst. cap. 22.

fore, nor by the Admiral nor his Lieutenant in no manner. Nevertheless of the death of a man, and of maim done in great Ships, being and hovering in the main stream, in the great Rivers, only beneath the points of the same Rivers, and in no other place of the same Rivers, the Admiral shall have Cognizance.

In the ancient Statutes, which were made by way of Petition and answer, *Poulton* in his Collection of Statutes, generally setteth forth the Petition by way of Preface to the body of the Statute, which he deduceth out of the answer, which in all Statutes which concern not one Jurisdiction and another, he hath done plainly and well enough, in the most, and yet not in all.

The same method and order he hath not observed in the translation of these before mentioned Statutes, which concern the Jurisdiction of the Admiralty, wherein he, or some other whom he hath followed, hath not dealt so fairly in my judgment, as he hath done in the translating and collecting of the rest; as may well be observed by comparing them with the Originals; he rendereth this Statute thus:

At the great and grievous complaint of all the Commons, made to our Lord the King, in this present Parliament, for that the Admirals and their Deputies do incroach to them divers Jurisdictions, Franchises, and many other profits pertaining to our Lord the King, and to other Lords, Cities and Burroughs, besides those they were wont or ought to have of right, to the great oppression, and impoverishment of all the Commons of the Land, and hinderance and loss of the King's profits, and of many other Lords, Cities, and Burroughs through the Realm: It is declared, ordained, and established, that of all manner of Contracts,

Contracts, Pleas, and Quarrels, and of all other things done, rising within the bodies of Counties, as well by land as by water, and also wreck of the sea, the Admiral's Court shall have no manner of cognizance, power, nor jurisdiction, but all such manner of Contracts, Pleas, and Quarrels, and other things rising within the bodies of Counties, as well by land as by water (as before) and also wreck of the sea, shall be tried, determined, discussed and remedied by the Laws of the land, and not before, nor by the Admiral, nor by his Lieutenant in any wise; nevertheless of the death of a man, and of a maim done in great Ships, being and hovering in the main stream of great Rivers, only beneath the Bridge of the same Rivers nigh to the Sea, and in no other places of the same Rivers, the Admiral shall have cognizance, and also to arrest Ships in the great Flotes, for the great Voyages of the King, and of the Realm, saving always to the King all manner of forfeitures and profits thereof coming; and he shall also have jurisdiction upon the said Flotes, during the said Voyages, only saving always to the Lords, Cities and Boroughs their Liberties and Franchises^c.

As for the exposition of this Statute made by Sir *Edward Coke*, I shall only leave it to be considered how it varieth from *Poulton's*, and both vary from the Original, aiming, as I cannot but believe, at their own ends, when meeting together in substance, will, being rightly considered, conclude one and the self same thing.

But having here challenged Mr. *Poulton*, or him whom he hath followed, that he hath not dealt so fairly in the Translation of these Statutes, as he

^c Stat. 15 R. 2. c. 3.

hath in the Translation of the other, I shall here shew how, and wherein he hath mis-translated the same, before I proceed any further.

My first challenge is, that in the Preamble to the first of these two recited Statutes ^d, he affirmeth that there was a great and common clamour and complaint, which had been oftentimes made before that time, *etc.* whereas there is mention of no one word thereof in the Petition, which denoteth any manner of clamour, but only a modest complaint of things done by the Admiralty Courts, which indeed ought not to have been done, as plainly appeareth by the Petition it self, and the answer thereunto set down before^e: But it is a thing merely invented in disgrace of the Admirals Jurisdiction. And secondly, that there is, as I shewed before, left out the whole Prayer of the Petition, both that part which was granted, and that which was not granted, by which means he would wrest and set awry, as I conceive, the sense and meaning of the Statute. Thirdly, that in the Preamble to this Statute, as in the former, it is said it was made at the great and grievous complaint of all the Commons, made unto our Lord the King, *etc.* whereas there is mention of no one word, which denoteth either great or grievous complaint in the Petition; but is only inserted as the other words were in the former Statute. Other things that were in this Petition, are not set forth in the Preamble of the Statute, which I shall not question, because I do not find that they were granted, but tacitly denied; and therefore shall proceed to the Petition and Answer, as they stand in the Parliament Roll in the Tower, out of

^d Stat. 13 R. 2. cap. 5.

^e Sup. cap. 2. hujus lib. 3.

which

which this Statute is deduced. And these be the words :

^f Item prient les communes pour profit du Roy et de Roylme, que come les Admiralls et leur deputes accrochent a eux diverses jurisdictions, franchises et autres profits que appertinent a Roy et as auters Shires et Cities, et Burghs quels ne solient avoir de droit a grant impoverishment de la come et arerissement de profits la Roy que plese comander as ditz Admirals et leur deputes quils mettant avant en cest par'taint leur clayme del jurisdiction franchise et profits quils clament d'avoir appendant a leur office issint que declaration de leur clayme en escript puisse estre fait en cest present Parlement per aunt la come y purra savoir dont ele serra entendent ou dit Admiral et dont nemppe.

Rex, le Roy voet que de tous maners, contracts, plees, quereles, et tous autres choses faits sordantz deins les corps de Countees si bien per terre come per eawe et auxint de wreck de meere la Court de la Admirall eit nulle manner conissance, poair ne jurisdiction, mes soient triez termines discus et remediez par les loyes de la terre, et nemye devant ne per l'Admirall ne son Lieutenant en nulle manner, nient meyns de mort d'home, et de maheim faitzes grosses niefs esteantz et hoverantz en my le haut fil des grosses rivers, tant solement paravale les pontz de mesmes les rivers plus procheys al meer et en null autre lieu de mesmes les rivers eit l'Admiral conissance et auxint darest des niefs en les grantz-flotes pur grantz viages du Roy et de Roylme, savant au Roy tous maners forfaitures et profitz et en provenantz et eit ensement jurisdiction sur les ditz flotes durantz les dites viages, tant solement savant ton-

^f Rot. Parl. 15. R. 2. n. 30.

dis as Shires, Cities, et Burghs lour liberties, et franchises.

The translations of the fore part of this Statute (the preamble excepted) though they do somewhat differ one from another, and both in some sort from the original, yet in matter of substance they may very well be brought to the same meaning and construction. This Statute was made within two years next after that of the 13th of *Richard* the Second, when the true meaning thereof rendered with the relation unto the Petition (according to the custom of those times when all Statutes were so made, viz. by petition unto the King, and his answer thereunto) was not forgotten; and had that of the 13th of *Richard* the Second born that construction Sir *Edward Coke* hath since made of it, the Petition whereon this of the 15th of *Richard* the Second is founded, need never have, nor ever had been made (I am confident) but these Western Petitioners (from whence all these Petitions came, and not from so general and common a clamour as *Poulton* makes it, as plainly appeareth by the Records cited by Sir *Edward Coke* in his 22d Chapter of the Jurisdiction of Courts, towards the end thereof, under this title therein, *Addition of some Records of Parliament*) not being satisfied concerning the plain meaning of the former Act, pray now that the Admirals and their Deputies may bring into the Parliament their Claim of Jurisdiction, Franchise and Profits, which they claim to belong unto their Office: So that the declaration of their claim being made in writing in this present Parliament, that may be reserved unto them, which shall belong unto the said Admiral, and no more. So that whether this part of the Petition concerning the Admirals giving in their claim in writing unto the Parliament,

was

was granted or tacitly denied; or whether they gave any such claim or not, doth not appear, but it doth plainly enough appear unto me, that upon this Petition, a true construction and exposition of the said former Statute is made, which is *multo magis contemporanea expositio*, than that exposition made of it, by the first Judgment given after twenty years at the Common Law against the Admiral's Power and Jurisdiction upon the Ports and Havens, which Sir *Edward Coke* ^g citeth in his said 22d Chapter of his Jurisdiction of Courts, and calleth *optima quia contemporanea*. This then must therefore be ^h *melior expositio* than his, and his not *optima*, which Judgment is more at large handled and treated of before. Now the Exposition of that Statute of the 13th of *Richard the Second* ⁱ, made by this part of the Statute of the 15th of the same King, is not disagreeable to the construction I have made thereof in the second Chapter of this Book, and is, as I conceive, absolutely in affirmance thereof, being so expounded. Which Exposition, as I have there said before (being taken with relation to the Petition, and joining them both together as they ought to be) rendereth itself thus. The Admiral shall not meddle with any Contracts, Covenants, *etc.* of or concerning a thing done within the Realm. This saith plainly that of all manner of Contracts, Pleas, and Quarrels, and of all other things done, arising within the bodies of Counties, *etc.* the Admiral shall have no manner of cognizance, *etc.* But they shall be tried, *etc.* by the Laws of the Land, and in this both Translations in substance made of this part of this Statute by *Coke* and *Poulton*, agree

^g *Coke Jurisd. of Courts, cap. 22.*
ⁱ *Sup. cap. 2. hujus lib. 3,*

^h *Sup. cap. 5. l. 2.*

with

with the Original, which saith *de tous manners, contracts, plees et quereles, et tous auters choses sur dantz deins les corps de counties, etc. la Court la Admirall eit nulle manner^s cognisance, etc.* Only here they would both purposely pare off (though to little purpose) the letter *a* from the word *arising*, and translate *surdantz, rising*; somewhat to blind the true signification, and make the word that importeth most, signify little or nothing, or at least not to be taken notice of: But let it be *arising*, or *rising*, do but take notice of it, and then the Contracts and Covenants that the Admiral is forbidden to meddle with, are the Contracts and Covenants of, or concerning things done within the Realm, saith the first of these two Statutes; and Contracts, Pleas, Quarrels, and other things done, arising within the bodies of Counties, saith the other; for so signifieth the word *surdantz*. So that Contracts and Covenants, *etc.* of or concerning businesses done at sea, the Admiral is not forbidden to deal with, or take cognizance of, nor of Contracts, Covenants, *etc.* from them arising; no nor of things done within the bodies of Counties, which have relation to the Sea, or to Navigation, or do from thence arise, is the Admiral forbidden the cognizance, but hath full power and jurisdiction over the same, not at all in my apprehension restrained by either of these two Statutes.

Now Charter parties, or other Contracts for freight or wages, tackling, furnishing, or victualing of Ships, *etc.* cannot be said to be Contracts, or Covenants of, or concerning things done within the Realm, or arising from things done, or to be done within the bodies of Counties, though they be there made, but are Contracts, or Covenants of, or concerning maritime businesses done,

or to be done at Sea, and arising from such things, as are there done, or to be done, which be the *finales causæ* of such Contracts, from whence all actions, or motions do arise; à *fine omnis oritur actio*; it is *causa causarum et impellit efficientem ad agendum, et præscribit destinatis ordinem ad agendum*.

The Transportation of Men, Merchandizes, Wares, and Commodities of all sorts, from one Kingdom or Nation to another, or from one Port to another by Sea (a thing not to be done within the Realm, or within the body of a County) is the *finis*, or *finalis causa*, from whence all Contracts or Covenants, for freight, wages, tackling, furnishing, and victualling of Ships do arise; such Contracts and Covenants are therefore by these very Statutes, in my Opinion, cognoscible and tryable in the Admiralty Court, and no where else.

If Bargains, Contracts, or Covenants for Land, Houses, Leases, Money, or other Land Commodities, be made upon the high Sea, and the Deeds, Bonds, Bills, or other Writings be there signed, sealed, and delivered, here the Construction of both the Statutes will be, that though the Bargains, Contracts, Covenants, *etc.* were made at Sea, yet they were of, and concerning things done, or to be done at Land, within the Bodies of Counties, and so cognoscible and tryable by the Law of the Land, which is true enough; and then certainly in Contracts and Covenants made at Land of, or concerning things done, or to be done at Sea, or arising from things there done, or to be there done, the same Statutes ought to be afforded the same Construction and Interpretation.

And

And had not this word *Surdantz*, arising, cleared this Construction upon this Statute, yet would the Law itself have avoided that Construction which hath been made of the other. For as in Land Affairs, by Law every man is to be understood, to have contracted in that place, where that which is contracted for, is to be performed; so in Sea Affairs doth the same Law and Rule hold; and in this point the Law is clear, ^k *Contraxisse unusquisque in eo loco intelligitur, in quo ut persiceret se obligavit. F. de obligat. et actionibus, l. contraxisse;* ^l *ad hoc etiam facit lex, aut ubi. F. de bonis autoritate jud. poss. et l. hæres, Sect. finali. F. de judiciis; et l. 65. F. de judiciis.* And this point is further amplified, ^m *Nam locus contractus is proprie dicitur non in quo instrumentum fuit conscriptum, sed in quo conventio suam in se recepit perfectionem. Decis. Senatus Dolani per Grevellum Decis. 91. n. 8.*

The Master or Owner of a Ship doth Contract with the Merchant, for so much freight by the month, to transport his wares and merchandizes by Sea; this contract is to be understood by Law to have been made at Sea, where the Ship served, and where so much money for so many months grew due; and the gloss upon the before cited Law, saith, *Cum essem Bononiæ, promisi tibi dare centum in Civitate Mutinæ, et de hoc factus est contractus Bononiæ, dicitur quod possum convenire Mutinæ ad illa centum, quasi ibi videar contraxisse.*

When I am at Bononia I promise to give you one hundred at the City of *Mutina*, and hereof

^k F. de obl. et act. l. contraxisse. ^l F. de bonis auth. jud. poss. F. de jud. l. hæres § fin. F. eodem l. 65. ^m Decis. sen. Dolani per Grevellum Decis. 91. n. 8.

a Contract is made at *Bononia*, yet may I be convented at *Mutina* for this hundred, as if I seemed there to have contracted, so that I am subject to the Jurisdiction of that City. So having contracted at *London* to transport any thing at, or by Sea, at a certain rate by the month, I am subject to the maritime and sea Jurisdiction. But it may be objected that *fiction juris* is allowed in all Laws, and although a man be bound to pay money at one place, he may be sued at another, and so a man being bound to transport goods, or perform any other duty, or service at one place, yet he may *per fictionem juris* be feigned, or presumed to have been bound to perform the same elsewhere, and so be sued elsewhere. *Sol.* I answer that it is true, if my fiction be of a thing possible, it may be allowed; as if I be bound to pay money at *London*, I may be sued at *York*, because it is possible I might have been bound to have paid it there: But if my fiction be of a thing impossible, it may not be allowed, for impossibilities nature abhorreth: As if I bind myself to transport a Merchant's Goods, to some Port beyond the Seas, it is impossible I should do it by Land; such a fiction, therefore, that I have done it by Land, is not to be allowed; nor am I for non-performance subject to any Land Jurisdiction. Out of the grounds of this Argument might be deduced a far larger debate, which by reason of the many differences between the Civil and Common Law in this point, would be too tedious. I shall therefore insist no longer thereupon, but come to the latter part of this Statute, *viz. Nevertheless of the death of a man, and a maihme, etc.* which had been more properly inserted among the particulars which concern the Admiral's Jurisdiction upon the Ports and Havens; but being here by Sir *Edward Coke*

Coke enforced all together, I cannot here let it pass without the observation due unto it. He, as I shewed before, in this chapter rendereth this part of the Statute thus: *" Nevertheless of the death of man, and a maihme done in great Ships, being and hovering in the main stream of great Rivers, only beneath the points of the same Rivers, and in no other place of the same Rivers, the Admiral shall have cognizance; excluding him from his power of the death of a man, and a maihme, etc. of arresting Ships in the great Flotes for the great Voyages of the King, or of the Realm, within the Ports and Havens, which both the original Statute, ° and Poulton's Translation alloweth him, as appeareth by what is already set down in this Chapter. And this only cognisance of the death of a man, and a maihme (by this his rendering of the Statute) he will allow the Admiral only beneath the points of these great Rivers, which the original setteth down Pontz, and Poulton's Translation rendereth Bridges.*

All that is beneath the points of great Rivers (it is well known) hath always been accounted the main Sea; so that by this construction of this part of the Statute, he hath limited the Admiral's Jurisdiction to the death of a man only, and a maihme, and arresting of great Ships, etc. and that upon the main Sea only, and will not allow him either Contracts or Covenants made at land, of, or for businesses there done, nor the cognizance of any thing done upon the Havens; but howsoever after this his construction of this word, he presently with one and the same breath, somewhat contradicts himself; for in his very exposition of this cause, he saith thus: This latter clause giveth the

^a Sup. hoc cap.

^o Sup. hoc cap.

Admiral Jurisdiction in case of death and maihme (with neither of which we ever meddled) but with all other things happening within the *Thames*, or any other River, Port, or Water, which are within any County of the Realm; so that the cognizance of this death and maihme, which before was allowed the Admiral only beneath the points, is now acknowledged never to have been meddled with at all by the Judges of the Land, though done upon the *Thames*, or any other River or Port, but only other things there happening; but how duly that was done, hath been before examined upon his very proposall of these two Statutes, and what he promiseth shall appear afterwards; he apprehended that all men must needs grant (which proveth far otherwise) that the Admiral hath no jurisdiction or power upon the Ports and Havens, more than what this Clause giveth him, and therefore, saith he, this Clause giveth the Admiral further jurisdiction in case of death, or maihme; and indeed by these words, *Nevertheless of the death of a man, and a maibme done beneath the bridges*, it may at the first reading seem that the Admiral should be before forbidden to meddle with the cognizance of any thing else there, and that the cognizance of these things should only be reserved unto him, which withall would seem very strange; and therefore more duly weighed and considered, this word *Nevertheless* doth not restrain the Admiral to these particulars only, *viz.* the death of a man, and a maihme, and arresting of Ships, *etc.* but the Statute ordaining immediately before, that all Contracts, Pleas, and Quarrels, and all other things arising within the bodies of Counties, as well by land as by water, shall be tried by the Law of the Land, lest the waters beneath the first Bridges should be taken to be within the bodies of Counties,

Counties, and the Admiral, by the words *as well by land as by water* should be excluded from his cognizance of things there done. Under that General of *as well by land as by water*, falleth this exception or limitation, *Nevertheless beneath the Bridges next unto the Sea, plus procheyn al meer*, (by them distinguishing the waters within the bodies of Counties, from those that are not within the bodies of Counties) the Admiral shall have cognizance of matters even of the highest nature, and greatest concernment, even of the death of a man, and a maihme, arresting of Ships, *etc.* not *exclusivè*, excluding him from the cognizance of matters of an inferior quality and nature; for by the Argument *à majore ad minus*, he that hath power in the weightiest affairs, hath certainly power in matters of less consequence, and smaller concernment; and it doth seem strange to me, that any man should think that the makers of this Statute (whom Sir *Edward Coke* affirmeth to be curious therein) should trust the Admiral with the cognizance of the death of a Man, and a maihme, *etc.* where they should not trust him with the sinking or maihming of a Ship or Vessel, or of the cognizance of the pilfering, or stealing of a Cable, or some such petty trifle: and it may as well be said that the Admiral by this Statute hath power to arrest Ships in the great Flotes for the great Voyages of the Common-wealth, but he hath no power to arrest the Ships, Guns, Boats, Tackle, or Furniture; or that when he hath arrested such Ships, he hath no power to press Mariners, or to take up Victual, Tackle, Furniture, or Ammunition for them; and how agreeable to reason (whereon all Laws ought to be grounded) this is, I leave it to the judgment of all men; and though this arresting of Ships may be said to be of no

matter of cognizance, yet is there the same reason of the one, there is of the other. *Y*et of matters cognoscible by the Admiral, it may be questioned, why these two particulars, namely the death of a man, and a maihme should only be specified, and nothing in general be expressed, for the cognizance of other things there done, if the same were intended him. *Ratio est in promptu.* Sir *Edward Coke* could not say, nor can I believe any man else, or shew that before the making this Statute, the Common Law Courts ever took cognizance of any matters concerning Ships, or other Vessels, their Tackle, Furniture, Ammunition, or whatsoever else to them belonging or appertaining, but always left them to the cognizance of the Admiral, as matters belonging to the Sea, and so proper to the Sea Jurisdiction ; but for the death of a man, and a maihme, which oftentimes happen above the first Bridges (where Ships neither do, nor can come conveniently) whereof the Common Law had cognizance, and not distinguishing of such death or maihme, whether the same was done above or beneath the said bridges, they had unduly taken cognizance thereof, as well beneath the bridges as above, as appeareth by what Sir *Edward Coke* himself hath cited in this his 22d chapter of his Jurisdiction of Courts, out of the 8th of *Edward the Second*, *tit. coron.* 399. where it is affirmed, that it is no part of the Sea where one may see what is done on one part of the water, and of the other, as to see from one land to the other ; that the Coroner shall exercise his Office in this case, and of this the County may have knowledge, whereby (saith he) it appeareth that things done

there are triable by the Country (that is by Jury) and consequently not in the Admiralty Court. Now by his leave, it only appears that they would have made it law, that of the death of a man there, which concerneth the Coroner's Office, they might take cognizance, and this, saith he, is affirmed for law by *Stanford's Pleas of the Crown*, lib. 1. fol. 51. b. in these words, *If one be slain upon any arm of the sea, where a man may see the land of the one part, and of the other, the Coroner shall enquire of this, and not the Admiral, because the Country may take cognizance of it.* And he voucheth the said authority of the 8th of *Edward* the second, whereupon he concludeth in these words: So this proveth that by the Common Law, before the Statute of the 2d of *Henry* the fourth, the Admiral had no Jurisdiction but upon the high Seas, which is no good conclusion, if well observed; as if it were impossible that the Common Law could not by some men be mistaken, and made to encroach upon the Jurisdiction of the Admiralty, as the Admiralty is accused to have done upon theirs; whereas here we see it plain in the 8th of *Edward* the Second, they had, or would have done in this particular; and therefore in expresse words doth this Statute declare, that of the death of a man, and a maim, the Admiral shall have cognizance beneath the first bridges. Let no man therefore from this of the 8th of *Edward* the Second conclude that the Admiral hath no Jurisdiction of any thing done upon the Ports and Havens, or water, where one may see from one side to the other, since that one particular from which a general is argued (an argument never allowed amongst Scholars and Logicians) is by Statute corrected.

9 Stanf. Pl. of the Crown, lib. 1. fol. 51. b.

For the rest of the particulars, whereon Sir *Ed. Coke* insisteth, he instanteth not in any one before the making of these Statutes (saving that before mentioned, and thus corrected by this Statute) nor of almost thirty years after the making of the last of three, and well nigh forty years after the making of the first of them; for it will be found to be little less than thirty years from the Second of *Henry* the Fourth, to the sixth of *Henry* the Sixth, and little less than forty from the thirteenth of *Richard* the Second, to the sixth of *Henry* the Sixth, in which year the first Judgment is said to be given in the Court of Common Pleas, upon these Statutes, which Sir *Edward Coke* affirmeth to be within twenty years of the making of the Statutes. And therefore his first observation upon the Judgment, raised from this mistaken ground is, that it is *contemporanea expositio*^r, which he saith is *expositio optima*, as is said before, to which I may without danger agree and consent; for I shall in the next Chapter shew that there is *expositio magis contemporanea*^s, and will not very well agree either with this, or any other of these latter Expositions of those Statutes; and what is inferred upon this Judgment by Sir *Edward Coke*^t, that it depended in advisement and deliberation, in the Court of Common Pleas eight Terms, as is before repeated, will clearly take away what is both by *Stanford* and himself affirmed in general, upon that one particular, of the Coroners taking his Inquest upon the death of a man upon the water, where one may see from the one side to the other, by that of the eighth of *Edward* the Second, namely that it appeareth, that by the Common Law before the Statute, things done there were

Sup. li. 2. ca. 5. ^s Inf. cap. 7. li. 3. ^t Spp. li. 2. ca. 5.

triable by the Country (that is by Jury) and not in the Admiralty Court; for if this had been so clear as both these two would make it, then needed not the Judges of the Common Pleas have advised or deliberated two days upon that point, wherewith they were troubled two years; which long deliberation and advisement plainly sheweth, that they were at first very loth to adventure themselves upon the seas (though at a Port) where they had never been before, yet at length they adventured, but truly, without any offence be it said, in a rotten Bark, without either Pilot or Steersman, as I conceive such a Voyage hath seldom been taken since, until Sir Edward Coke's time, immediately after which some have followed his Bark or Vessel, and will so continue, if their Voyage be not stopt. But I shall proceed unto the next Statute, leaving that point of the cognizance of the wreck of sea in this Statute mentioned (which is a thing that concerneth not Contracts, *etc.* about Maritime Affairs made at land) unto a Chapter by itself.

C H A P. VI.

The Argument deduced out of the Statute of the second of Henry the Fourth, cap. 11. to prove the Contracts made at land concerning Maritime affairs, are not cognizable in the Admiralty, redargued.

THE Statute of the second of Henry the Fourth is likewise urged against the Admirals Cognizance of Contracts and Covenants made

at

at Land concerning Maritime Affairs, and hath been usually recited in prohibitions with the other two.

This Statute is thus rendered by Sir *Edward Coke*. It is enacted (saith he) that the Act of the thirteenth of *Richard* the Second, cap. 5. be firmly holden, and kept, and put in due execution, and further at the prayer of the Commons, that as touching a pain to be set upon the Admiral, or his Lieutenant, that the Statute and the Common Law shall be holden against them, and the party grieved shall recover his double damages.

For the first part of the Statute he apprehendeth that he hath given a due exposition of that of the thirteenth of *Richard* the Second, by setting down the answer to the Petition, without any relation to the Petition itself, and then indeed this Statute to ordain that the former should be firmly holden and kept, and put in due execution, would have made somewhat to his purpose : But if that first Statute be duly examined, and receive a due construction, then I conceive this will no ways advance his Cause. He further inferreth, that because this Statute doth ordain, as touching a pain to be set upon the Admiral, or his Lieutenant, that the Statute and Common Law should be holden against them ; that therefore it appeareth by this Act, that the Statute of the thirteenth of *Richard* the Second is but an affirmance of the Common Law, which he promiseth shall afterwards appear^a, which I with much diligence in my reading expected, but could find nothing more than what (as I hope) hath in its due place received an answer. And if we examine the original

^a Coke's Jurif. of Courts, cap. 22.

Statutes, and Poulton's Translation of this part of this Statute, they will plainly shew what Statute, and what Common Law shall be holden against them.

I shall therefore here set down the Statute according to the original, and likewise Poulton's Translation thereof; and the original is by way of petition and answer in these words.

^b *Parl. 2 Hen. 4. mem. 75. It. prient les ro-
mes que les estatutz faitz en temps le Roy Rich.
touch la jurisdiction de Courte Admiraltie soient re-
nuz et firment gardez et que l'admiral, et ses lieute-
nantz ne teinont null mannor de plee deinz la Court
d'admiral en contre la forme et Ordénance des dits
estatutz et s'ils fount a contre en courgent la peine
xx l. paiaint la moite au Roy, et l'autre moite a Ponte-
greve.*

*R. soit lestatute ent fait tenuz et autre coo quant
a peine meire sur l'Admiral ou son lieutenant soit le
statute et la come ley tenuz denoz euz et que rely qui
loy sente querens en contre la forme de le dit estatute,
eit sa occasion par briefs foundue sur locas eours celui
gensy pursue en la Court d'Admiraltie, et recouere
ses damages damuns mesme le pursueant au double
et encourge mesme le pursueant la peine de xl. en til
le Roy pur sa pursue ensi faitz, s'il soit attempte.*

Which Statute is by Poulton rendered thus.

*Item, Whereas in the Statute made at Westmin-
ster, the thirteenth year of the said King Richard,
amongst other things, it is contained that the Ad-
mirals and their Deputies shall not intermeddle,
from henceforth of any thing done within the
Realm, but only of a thing done upon the Sea,
according as it hath been duely used in the time
of the noble King Edward, Grandfather to the*

^b *Parl. 2 H. 4. mem. 75.* ^c *2 Hen. 4. mem. 75.*

said King *Richard*, our said Lord the King, will-eth and granteth that the said Statute be firmly holden and kept, and put in due execution ; and moreover the same our Lord the King, by the advice and assent of the Lords Spiritual and Temporal, and at the Prayer of the said Commons, hath ordained and established, that as touching a pain to be set upon the Admiral, as his Lieutenant, that the Statute, and the Common Law be holden against them ; and that he that feeleth himself grieved against the form of the said Statute, shall have his action by Writ, grounded upon the Case, against him that doth so pursue in the Admiralty Court, and recover his double damages against the pursuant, and the same pursuant shall incur the pain of ten pounds to the King, for the pursuit so made, if he be attainted.

Now it plainly appeareth by the Original, which I have here *verbatim* set down, that this Statute is only in confirmation of the former Statute as originally enacted, according to the true construction thereof, which taken together with that exposition of the fifteenth of *Richard* the Second, hath truly rendered of that and the same, being taken with relation to the Petition as I conceive it ought to be, and by Sir *Edward Coke* and *Poulton's* Translations here, it is in affirmance of the first of them only, as *Poulton* himself hath in his Translation thereof rendered it ; so that neither of these two Translations agree with the Original, saving in this, that he that shall find himself aggrieved against the form thereof, shall recover double damages against the pursuant.

Now what may be called Damages that shall be recovered double by this Statute, is a great question : If a man do sue in the Admiralty Court, and there recover, and is paid a just and due debt
of

of 100 *l.* which he ought to have sued for in the Common Law, and might have there surely recovered, the question whether the other party can be said to be damnified, that 100 *l.* over and above his expences and trouble; I cannot imagine any reasonable man will say he was. What shall be thought then of the leading case, *Hil. 6. H. 6.* in the Common Pleas, cited by Sir *Edward Coke* for the first that received Judgment in that Court upon this Statute, of double damages, who saith that *Bartholomew Putt* sued *John Burton* in the Admiralty, for that he by force of arms, three Ships of the said *Bartholomew's* with his Prisoners and Merchandizes to the value of 960 Marks, odd Money, being in the said Ships, did take, and carry away, supposing the taking to be *super altum mare*, whereas it was in the Haven of *Bristol*: Whereupon the said *Burton* sued the said *Putt* upon the Statutes, and a Verdict was found for the said *Burton* against the said *Putt*, and damages assessed unto 700 *l.* and Judgment given double for 1400 *l.* In this place I shall set aside the Question, whether this case was proper to the Admiralty Court, or the Common Law, having spoken to that purpose already in a place more proper^d; and here only examine the question, concerning the damages, and them doubled. It doth not appear by any thing is said by Sir *Edward Coke*, that *Putt* had either received from, or so much as recovered of the said *Burton* the said 900 Marks, or any part thereof; and yet the said *Burton* is found there to be damnified the said 900 Marks, besides 100 *l.* more for his expence and trouble, all which is double by the Judgment: so that by this Judgment he was barred and hindered

^d Sup. li. 2. cap. 5.

any trial for his 900 Marks, or whatsoever else he should prove himself to be damnified, which no man can or could then say he was not to have recovered in one of the said Courts; but was condemned to pay 1400 l. Damages to *Barton*, who was damnified nothing more than his expence, and some trouble in a wrong Court (as is pretended) for what he had unjustly done, for ought ever appeared, or was ever attempted to be made appear, and he hereby acquitted of that Act, how unjust forever.

If it might have been granted (which may not be) that the Admiral had no jurisdiction nor cognizance of this cause, yet surely that Court which had, might first have examined whether *Barton's* act, complained of, was an unjust act or not, and whether *Bart* should not there have recovered 900 marks as well as in the Admiralty Court; and certainly if he should, then cannot I conceive how *Barton* can be said to be damnified that 900 marks, which might elsewhere have been recovered, and obtained against him; nor can I judge that he being sued for 900 marks, which neither were nor could there or elsewhere have been obtained against him, was thereby damnified 900 marks. I shall therefore leave it here to be considered, whether such a Judgment once given at the Common Law, is to be held firm and continued for law ever after, or not.

But I must not pass over a main objection, which might have been, or may hereafter be raised out of this Statute, as the same is by *Poulton* rendered, which is this: The Statute (as he rendereth it) saith, that whereas in the Statute made at *Westminster*, the thirteenth year of king *Richard* the second, amongst other things, it is contained that the Admirals and their Deputies shall not intermeddle

termiddle from henceforth of any thing done within the Realm, but only of a thing done upon the sea, *etc.* so that hereby it may seem, and be very well urged that this Statute doth clearly confirm the Statute of the thirteenth of *Richard* the second, as the same is both by *Poulton* and *Sir Edward Coke* rendered and translated without any relation to the Petition: but if this very Statute be duly considered, it will plainly appear that *Poulton* hath here thrust in a repetition of the former Statute, according to his own former rendering thereof, to make the same good, which the original before inserted in this very chapter, being consulted withal, will not allow him; for there is not one word of this repetition mentioned either in the petition or answer, *quod vide*; for the Petition is, that the Statutes made in the time of *Richard* the second touching the Jurisdiction of the Admiralty, comprehending the one as well as the other, as well the latter, which rendereth the true construction of the former, according unto the true meaning thereof, taken with relation to the Petition, as I cannot conceive but that it ought to be, as the former of the thirteenth of *Richard* the second may be held and firmly kept, and that the Admirals and their Lieutenants, may not hold any manner of plea in the Court of the Admiralty, contrary to the form and ordinance of the said Statutes, which by the Answer is granted in general, without repeating any part, either of the one of them, or of the other.

So then these former Statutes, being only considered with relation to the Petitions, whereunto they are answers, I conceive this Statute affordeth no Argument at all against the Admiral's Jurisdiction.

Sup. hoc capite.

diction, or cognizance of Contracts made at land, concerning Maritime affairs, more than what the other afforded ; and so I hasten to what I promised in the Chapter preceding this.

C H A P. VII.

That the Admiral by these Statutes, was not barred the Cognizance of Maritime Contracts, though made at Land, made appear by the practice of those times, proved out of ancient Records remaining in the Tower of London.

THE Judgment given in the Case of *Burton and Putt*, by Sir *Edward Coke*, said to be the first that can be found, that was given upon the Statutes, against the Admiral's having jurisdiction any where, but upon the high seas, and by him said to be within twenty years of the making of the Statutes, and so *contemporanea expositio*, the time being duly computed, as I have said before^a, will be found to have been given full twenty-seven years after the last of them ; for the Parliament, wherein the last of them, viz. the Statute 2 *H. IV.* was made, was begun and holden at *Westminster*, in the *utras* of *St. Hillarie*, *Anno Domini* 1400 ; and in *Hillary Term* 1427, being 6 *H. VI.* was this Judgment given, so that the largest part of four in this computation, is abated, to bring this Judgment within the compass of a contemporary exposition ; but indeed this Judgment must be

^a Sup. lib. cap.

grounded as well upon the two former, as this latter, and principally upon the first of them; and then is this Judgment thirty-seven years and more, after the making of that Statute, the same being made in *Anno* 1389. This Statute therefore having not born this construction or exposition from the time of the making of it, until thirty-seven years after, and upwards, this being the first Judgment thereupon (as is confest) and that given by the Judges, not without a great deal of doubting for the space of eight terms, before they could agree, or would adventure to give that construction, or such exposition thereof, though tending *ad suam jurisdictionem ampliandam*, I cannot apprehend that this was *contemporanea*, or *optima expositio*, nor do I find by all the particulars cited by Sir *Edward Coke*, concerning this matter, that this Judgment was ever pursued as a precedent or example, by the same, or other succeeding Judges.

Indeed two Actions he instanceth in brought upon the same ground, one by *Cupper* against *Rayner*, and the other by *Wyderwell* against *Rayner*, brought both in the Court of the Common Pleas, about six years after this Judgment, viz. ^b *Pasche* 12. H. VI. But he speaketh not of any Judgment given therein, which if there had, he would not willingly have omitted to have inserted the same, which maketh me verily conceive that no Judgment was given upon either of them; nor indeed can I think that the former Judgment by him cited, ever took any effect, or was ever put in execution.

If Sir *Edward Coke's* rule be true, that *contemporanea expositio est optima*, a contemporary exposition is best, then is not this exposition made by

^b Sup. c. 6. li. 25.

this Judgment the best, though it may be, *magis contemporanea*, more contemporary than the other Judgments, or expositions given longer after, viz. *c. Pascha* 28 *Eliz.* which he instanceth in, That *Evangelist Constantine*, having covenanted with *Hugh Gynn*, that his Ship should sail with Merchandizes of the said *Gynn* to *Muttrell* in *Spain*, and should there remain for certain days, upon breach of which Covenant, *Gynn* brought an Action of Debt of 500 *l.* in regard the Charter-party was made at *Tbetford* in the county of *Northfolk*, and had Judgment in the King's-Bench; And that *Mich.* 30 and 31 of *Eliz.* of an Action of Case brought upon a Policy of Insurance, so that the former may be said to be *melior expositio*, a better exposition than those latter, because it seemeth to be the foundation whereon they are grounded, and therefore more authentic. But if I shall shew that within a far shorter compass of time after the making of the said Statutes then any of those judgments were given, which he hath instanced in, no such exposition was made of the said Statutes, but that the Admiralty was held to be the proper Court for such causes, and the Civil Law fittest to judge them by, then will mine be *multo magis contemporanea expositio*, a far more contemporary exposition than his, and by his own rule, *si non optima, multo tamen suis melior*, If not the best, yet far better than his.

I shall therefore instance in an Action brought in the Admiralty within three years after the making the first of these Statutes, and in *August* next after the making of the second of them, and in the same year that this last Statute was made, as will appear by the Record itself, which I shall in this chapter set down at large.

The Action was brought in the Admiralty of the *West*, before *Nicholas Clifton*, then Lieutenant to the Earl of *Huntingdon* Admiral of the *Western* ports, by *Peter Draper* and *Robert Ancleyn* of *Sherbourne*, Merchants, against *William Stillard*, Mariner, in a cause of contract, and letting to freight a Ship of the said *William Stillard*, called the *Leibenard* of *Haniel*, to sail thence to the *Isle of Ree*, for Salt, there to be had, and carried or brought back from thence to *Weymouth* or *Southampton*, at the choice of the said Merchants, as by the Charter-party of Contract and Affreightment of the said Ship indented, and between the said parties made, evidently appeared: And this Action there sometime depended, and was proceeded in unto sentence without any interruption, or being any ways hindered by any manner of objecting either of the said two Statutes, against the proceedings in the said cause, and sentence was given for the said *Stillard*, from which the said *Draper* and *Ancleyne*, appealed unto the King in Chancery, and a Commission was from thence by the Lord Chancellor awarded unto five other Civilians, or to any four, three, or two of them, giving them full power and authority to take the said cause of appeal into their cognizance, to be proceeded, heard, and discussed in due form of Law, and the same to determine according to Law.

All which will appear by the Commission itself, upon Record in the *Tower*, which I will here set down *verbatim*.

R. dilectis et fidelibus suis Johanni Cobham, Magistro Johanni Bennet, Magistro Johanni Runhale, Magistro Thomæ Southam, Magistro Johanni Combe, salutem. Sciatis cum nuper motâ lite seu

^a J. par. patend. 15. R. 2. m. 27.

controversiâ in Curia nostrâ Admiralitatis Angliæ in partibus Occidentalibus coram dilecto et fidei nostro Nicholao Clifton tunc locum tenente clarissimi fratris nostri Comitis Huntingdon, Admiralli nostri in partibus prædictis, inter Petrum Draper, et Robertum Ancleyne de Sherbourn, Mercatores, partem Africem ex una parte ; et Willielmum Stillard Marinarium partem ream ex altera, occasione affretationis, conductionis, sive locationis cujusdam navis prædicti Willielmi, Lethenard de Hainnel nuncupat. ad veland. ad partes de la Ray pro sale ibidem habendo et prædict. inde carcandum, et deinde apud Weymouth vel Southampton, ad electionem mercatorum reducend. ut occasione conventionum et contractuum affretationem, conductionem navis prædictæ concernen. de quibus per chartas indictatas inter personas suprascriptas evidenter apparet, aliquandiu vertebatur prædictus locum tenens perperam in causa prædicta procedens, et parti Willielmi plus debito favens, sententiam contra eos Petrum et Robertum pro parte dicti Willielmi tulit, diffinitivam, iniquam, invalidam, sive nullam, ad instantiam ad procurationem dicti Willielmi subdolas et injustas minus justè ut asseritur in ipsorum Petri et Roberti præjudicium non modicum, et gravamen ; a qua quidem sententia diffinitiva et cæteris gravaminibus prætensis fuisset, et sic per prædictum Petrum no'ie suo et procuratorio no'ie dicti Roberti ad nos et nostram audientiam legitimè ut prætenditur appellatum, quam quidem appellationem idem Petrus intendit ut asserit, pro se et dicto Roberto prosequi cum effectu, ac nobis supplicavit ut sibi et præfato Roberto super appellationem prædictam certos judices dare seu assignare dignaremur ; nos supplicationi hujusmodi, tanquam juri consonæ annuentes, vobis quatuor, tribus vel duobus vestrum in solid. de quorum fidelitate et industria fiduciam gerimus socialem, committimus vices nostras.

nostras, ac plenam tenore præsentium potestatem ac mandatum speciale ad audiendum, cognoscendum, et procedendum in causa seu causis appellationis bujus, necnon in causa in hac parte principali, prout dictaverit ordo Juris ipsam et ipsas cum suis emergentibus, incidentibus, et connexis quibuscunque secundum juris exigentiam, discutiend. et fine debito terminand. et ideo vobis et cuilibet vestrum mandamus, quod, vocatis coram vobis quatuor, tribus, vel duobus vestrum partibus prædictis, ac aliis in hac parte, quos de jure fore videritis evocand. auditisque in dicta appellationis causâ unâ cum principal. earum rationibus et allegationibus circa præmissa diligenter intendatis et ea faciatis et exequamini in forma prædicta. Damus autem præfato Admirallo nostro ac ejus locum tenenti, necnon universis et singulis Officiariis, Ministris, Ligeis, Subditis, ac aliis fidelibus nostris quorum interest tenore præsentium firmiter in mandatis quod vobis quatuor, tribus vel duobus vestrum in forma dicti mandati nostri, prout ad ipsos pertinet, intendentes sint et respondentes, consulentes, et auxiliantes, et vestris mandatis obedientes prout decet. In cujus etc. 4. apud Westm, 3 Augusti.

And in the seventeenth year of the same King's reign, *John Coppin*, Mariner and Owner of the Ship the *Gabriel* of *Sancta Osicha* of *Burdegall* sued *William Snoke* and *Thomas Saxtingham*, Merchants, for freight of that Ship; first at the Common Law, where the Action lay not, and so failed; and then in the Admiralty; but before sentence appealed to the High Constable's Court, where his Appeal lay not; and was therefore from thence dismissed, and condemned in Expences; who then appealed to the King in Chancery, and had a Commission from thence directed unto *Richard Stury* Knight, Mr. *John Bennet* Official of the Court of Canterbury, and Mr. *Michael Sergeaux* Dean of the Arches
London,

London, to hear and discuss the said cause in due form of Law, and to determine the same according to the Rules of the Civil Law, they being all three Civilians: All which likewise appeareth by the Commission itself upon Record in the Tower, which followeth in these words:

Rex, dilectis et fidelibus suis Richardo Stury militi, Magistro Johanni Bennet, Officiali Curie Cant. et Magistro Michaeli Sergeaux Decano de Archibus London. salutem. Sciatis quod cum Willielmus Snoke, et Thomas Saxtingham, Mercatores quandam navem vocatam le Gabriel de Sancta Offica apud Burdegal, in quodam loco vocato le Umbier. cum decem et septem doliis et una pipa vini caricassent, et cum quodam Johanne Coppin marinario de Comitatu Essex, Magistro navis prædictæ conventionassent quod ipsa vina prædicta usque Gadenasse in partibus Essex' salvo duceret, solvendo sibi pro quolibet dolio, viginti solidos, et pro una pipa decem solidos, ut accepimus, et licet idem Johannes conventionem suam bene et fideliter compleverit, prædicti tamen Willielmus et Thomas in hac parte debitè requisiti præfato Johanni in parte vel in toto juxta conventionem suam prædictam satisfacere non curarunt, prout idem Johannes conqueritur, super quo idem asserens se versus prædictos Willielmum et Thomam tam per communem legem regni nostri Angliæ quam in Curia Admiralli nostri versus partes Boreales diu sequutum fuisse et nullum remedium in hac parte habere potuisse, dictos Willielmum et Thomam in Curia Constabularii et Marescalli Angliæ ad respondendum sibi in causa prædicta summoneri et venire fecit, ac quendam libellum super actionem prædictam in eadem Curia coram dilectis et fidelibus nostris Johanne Cheyne locum tenente Constabularii

bularii prædicti, et Wilhelmo Farrington locum te-
 nente dicti Mareſcalli noſtri verſus prædictos Willi-
 elmum et Thomam adhibuit et propoſuit, Adonque
 Johannes et Wilſelmus locum tenentes in cauſa
 prædicta, minus rite et indebitè procedentes, ac ju-
 dicialiter affirmantes et allegantes ipſos nullam juriſ-
 dictionem in hac parte habuiſſe præſatos Wilſelmum
 Snoke et Thomam à curia prædicta, et de inſtantiâ
 prædicti Johannis Coppin, ſine cauſa rationabili
 quacunque dimiſerunt et deliberaverunt, et ipſum
 Johannem Coppin in quadam magna pecuniâ ſumma
 argenti pro cuſtibus ipſorum Wilſelmi Snokes et
 Thomæ in hac cauſâ coram eis in eadem Curia factis
 per ſententiam ſuam ſeu judicium condemnârunt, et
 dictos cuſtus ad quandam ſummam nimis exceſſivam
 taxarunt et limitarunt, de quibus quidem ſententia
 judicio et condemnatione expenſarum, et de taxatione
 earundem et aliis gravaminibus prætenſis præſato
 Johanni Copyn in hac parte illatis, et per partem
 dicti Johannis ad nos et noſtram audientiam legitime
 appellatum ſicut per inſtrumentum publicum ſuper hoc
 confeſtum plenius apparet, qui quidem Johannis ap-
 pellationem ſuam prædictam intendit ut aſſerit proſe-
 qui cum effectu, et nobis ſupplicaverit ut ſibi ſuper
 appellatione ſua prædicta certos Judices ſive Com-
 miſſarios dare et assignare dignaremur, nos ſupplica-
 tioni prædictæ tanquam juri conſonæ annuentes, vo-
 bis de quorum fidelitate et induſtria fiduciam gerimus
 ſpecialem committimus vices noſtras, et plenam tenore
 præſentium poteſtatem ac mandatum ſpeciale ad audi-
 endum, cognoscendum, et procedendum in cauſa, ſive
 cauſis appellationis hujus prout dictaverit ordo juris,
 ipſamque et ipſas cum ſuis emergentibus, dependenti-
 bus, incidentibus, et connexis quibuſcunque ſecundum
 juris exigentiam diſcutiend. et debito ſine terminand.
 ac etiam ad teſtes quoscuque per utramque partium
 prædictarum in hujus cauſa appellationis, coram
 vobis

*vobis judicialiter producentes, sine dolo vel fraude, odio vel favore, aut aliàs injustè subtraxerint veritati testimonium perhibere compellandum. Et multa alteriusque temporalis cohercionis cujuslibet potestate ; et ideo vobis mandamus quod vocatis coram vobis partibus prædictis et aliis quos in hac parte fore videritis evocand. auditisque in hujus causis appellati-
onis earum rationibus et allegationibus circa præmissa diligenter intendatis et ea faciatis et exequamini prout justum fuerit et consonum rationi ; volumus etiam quod si aliquis vel aliqui vestrum inchoaverint vel inchoaverit procedere in præmissis, alius vel alii vestrum libere procedere valeat sive valeant, in eisdem licet inchoantes absentes inchoans absens fuerint vel fuerit etiam nullo impedimento legitimo impediti vel impeditus. In cujus, &c. T. R. apud Westm. xiiii^o die Novembris.*

After this, and after the making of the other Statute of the second of Henry the IVth, one *Edmund Brookes*, Mariner, brought his Action in the Admiralty Court before *John Sturmister*, Lieutenant-General of *Edmund Earl of Kent*, Admiral of *England*, against *John Birkyrne*, *Richard Honesse*, *John Wallas*, and *William Burton* of *Kingston upon Hull*, Merchants, Partners in a Maritime Cause of contracting and taking to freight of a certain ship, called the *Laurence of Gypelwich*, and the same was there proceeded in unto sentence, and sentence was given for the said *Edmund Brookes*, against the said *John Byrkyrne* and Company ; from which sentence the said *Byrkyrne* and Company appealed unto the King in Chancery, and there obtained a Commission of Appeal from thence, directed unto *John Kingston* and others, who by virtue thereof proceeded in the said Cause unto sentence, and thereby reversed the former sentence, and condemned the said *Brookes* in expences ; from which
said

said sentence the said *Brookes* again appealed unto the King in Chancery, and obtained a Commission of Review directed unto the then Bishop of *London*, and fix Civilians, to review, discuss, and hear the said Cause in due course of Law, and to determine the same according thereunto.

And this last Commission of Review was granted but eight years after the making of the said Statute of the second of *Henry* the IVth; and therefore the Cause must needs be instituted and begun in the first instance some years before, nearer unto the time of the making of the said Statute, the same having been proceeded in even unto sentences in two several instances before the granting of this Commission: All which appeareth by the Commission of Review itself, which is upon Record in the *Tower* in these words following:

¶ Rex venerabili in Christo Patri R. Episcopo London. ac dilectis, ac fidelibus suis Thomæ Beauford, Thomæ Eppingham, Magistro Thomæ Field, Roberto Thorley, Willielmo Senenocks, et Johanni Oxney, salutem. Ex parte Edmundi Brookes marinarum nobis est ostensum, quod licet Magister Johannes Sturmyster, nuper locum tenens generalis Edmundi nuper Comitis Cantariæ nuper Admiralli nostri Angliæ in quadam causa maritima quæ in Curia Admirallitatis occasione affrehtationis conduccionis sive locationis cujusdem navis Laurence de Gippelwich, coram præfato Johanne tunc Judice in ea parte competenti inter præfatum Edmundum partem attricem ex una parte et Johannem Birkyrne, Richardum Horneffe, Johannem Walas et Willielmum Burton socios ut dicitur in causa prædicta Mercatores de villa de Kingston super Hull partem ream, ex altera vertebatur quandam sententiam pro parte dicti

¶ An. 10 H. IV. 2 parte paten. mem. 6.

Edmundi contra partem prædictorum Johannis Birkyrne, etc. rite et legitime tulerit definitivam, pars tamen eorum Johannis Birkyrne, Johannis, etc. a sententia prædicta ad nos et nostram audientiam frivole appellavit, quo prætextu quidem Magister Johannes Kingston et alii colore ejusdem commissionis nostræ eis ad cognoscend. et procedend. in dicta causa appellationis prætens. et negotio in ea parte principali prætens. directæ perperam et illegitimè procedentes ac dicti parti appellanti plus debito faven. dictam sententiam pro parte dicti Edmundi ut permittitur, latam licet nullam habuerint jurisdictionem, infirmarunt, cassarunt, irritarunt, et adnullarunt, ac ipsum Edmundum in expensis per partem dictorum Johannis Birkyrne, Richardi, Johannis, etc. in prædicta prætensa causa appellationis et negotio principali prætenso et eorum actione factis parti eorum solvendis per prætensam suam sententiam diffinitivam inique latam erroneam invalidam cominaverunt in omnibus minus jussu in ipsius Edmundi dispendium non modicum et gravamen, unde per partem prædicti Edmundi sententis se ex præmissis sententiis et expensarum condemnatione indebite pergravari ab eisdem sententia et expensarum condemnatione ad nos et nostram audientiam est appellatum, sicut per instrumentum publicum inde confectum est in cancellaria nostra ostensum, plenius poterit apparere, idem Edmundus nobis supplicavit, ut in dicta causa appellationis suæ procedere, et sibi justitiam in hac parte facere digneremur. Nos supplicationi prædictæ annuentes, vobis, etc. quorum alterum vestrum vos præfatum Episcopum et Thomam Field, etc.

I shall instance only in one more, one *Alan Wagtoft* sued *Thomas Jobnesson* and *Thomas Rafin* for 25 l. for freight of the half of a Vessel called the *Christopher* of *Boston*, as Master and Owner of half of the said Vessel; and the said Cause was proceeded

proceeded in before *Henry Bole*, Lieutenant-General of the Admiralty Court, which Cause was from him appealed unto the King in Chancery, and a Commission in the eleventh year of *Henry the IVth*, being but nine years after the making the said Statute, and the Cause in the first instance must needs have been begun some good space of time before that. The Commission of Appeal runneth thus :

¶ *Rex dilectis et fidelibus suis Richardo Rochefort Chivaler, Magistro Henrico Ware, Magistro Richardo Brinkley, et Magistro Thomæ Field, salutem. Sciatis quod cum ut accepimus nuper in quadam causa maritima pecuniaria viginti et quinque librarum prætextu affræctamenti medietatis cuiusdam navis vocat' la Christophre de Boston ad Alanum Wagtoft de villa Sancti Bothoni ut ad dom. et possessorem ejusdem medietatis, aliis pertinen. partem attricem et prosequentem ex parte una, et Thomam Johnesson et Thomam Rafin de villa prædicta partem ream defendentem ex parte altera, que coram Henrico Bole locum tenen. general. Curie Admiraltatis Angliæ, etc.*

Now for the three Records instanced in by *Sir Edward Coke*, and brought out of the Courts of the Common Law, against the Admiral's Jurisdiction upon the Ports and Havens, and in Matters of Contracts upon businesses to be agitated at sea, I have shewed four out of the Chancery, which was then (as by his own setting forth appeareth) the only Court enabled to grant Prohibitions in case the Admiral meddled with causes belonging unto the Common Law: For thus he saith :

^h Sundry Towns of the West part praying remedy against the Officers of the Admiralty, for holding plea of matters determinable by the Com-

¶ An. 11. H. IV. 1. parte paten. m. 12. ¶ *Coke Instit. parte 4. cap. 22. pag. 146.*

mon Law, which they pray may be revoked, the King's Answer was:

The Chancellor by the Advice of the Justices upon hearing of the matter, shall remit the matter to the Common Law, and grant a Prohibition.

And as these Records are of far greater antiquity than those by him instanced in, so are they far more contemporary with the said Statutes; and therefore, by his own rule, of far greater authority.

Besides, these three Records by him instanced in, do but *de facto* set forth what was done, and that but at those three several times in those Courts, *sed quo jure non arguitur*. But it may be very well apprehended, that in twenty-seven years after the making of the last of those Statutes, and thirty-seven after the making of the first of them, the Petitions upon which those Statutes were grounded, and from whence they must receive a right construction, began to be forgotten; but after the same were revived and brought again into Remembrance, the Admiralty Court had no more such interruptions, but proceeded as before until the times of those Actions wherein he instanceth which were brought in far later times than the former, when the said Petitions, whereunto the Answers have, or ought to have reference, were (as it were) again quite out of remembrance: For if from the time of making of those Statutes, until the time of the last of the Judgments instanced in, all the particular Actions that have been brought, and Sentences that have been given in the Admiralty for things done upon the Ports and Havens (against the cognizance of which causes one of these judgments is brought) and all the Actions brought, and Sentences that have been there given upon Contracts made at land, for businesses to be agitated at sea, against

against which the other two Judgments are brought, should be set forth, I might boldly say there would be many hundreds for one; and I might very well, and very justly cite divers of those Records out of the Registry of the Admiralty for the Jurisdiction of that Court in matters of this nature, which I doubt not but ought to be as good proof for the Jurisdiction of that Court whereunto they do belong, as those few Records pickt up out of the Registry of the Common Law Courts ought to make for that Jurisdiction whereunto they belong; nay by those Records of the Admiralty, and the constant, the continued, and the general practice and usage of taking cognizance of causes of this nature, it plainly appeareth that the Jurisdiction thereof anciently did, and still doth belong unto that Court; for in land businesses whose land or soil shall we judge that to be, but his who hath generally, continuedly, and constantly reapt the Crop, and not his who hath at some times come by and taken up a Shock or two, and so done as much as he which reapt where he never sowed? which he must needs do which is neither vers'd nor skilled in *jure scripto*, in that Law which is positively set down for that purpose, but shall judge thereof at random, and will so do because others have done so before him; nor under correction can it be held to be any good rule of Justice to judge by precedent; for if one man, or more, have judged unjustly, and not according to law, I would not have it said, that he which knoweth the law, is notwithstanding bound to judge as the other did, because he hath a Precedent for it. But I shall pass these precedents over, and as I have in the second book of this Treatise shewed you, that even by

Ut patet constare, ut credo, ex prius dictis.

Records

Records out of the Chancery and Common Law, things done upon Ports and Havens are cognizable in the Admiralty Court, so I shall here shew that by Records of the same Courts the Admiralty hath cognizance of Contracts made at land of and concerning Maritime affairs and businesses agitated, or to be agitated at sea.

C H A P. VIII.

That by other Records out of the Chancery, Contracts made at Land concerning Maritime Affairs are cognoscible in the Admiralty-Court.

ONE Lodowick Sutton sued John Pettite, of Abville in Picardy, Merchant, Andrew Lord and Daniel Lancel, in the Admiralty Court, upon several Maritime Contracts made between them in the City of London, the said Pettite, Lord, and Lancel, upon their complaint made in Chancery, that they were sued in the Admiralty Court upon several Contracts and Agreements made between them upon ordinary trading and bargaining within the City of London, obtained a *Superfedeas* grounded upon the before-mentioned Statutes, to stay the proceedings there; but upon further complaint of Sutton made unto the said Court, and upon shewing that the said Contracts, though there made, were maritime and within the Jurisdiction of the Admiralty, a Writ *de procedendo* was awarded, commanding that the said Admiralty should proceed in the said Cause according to law, and the custom of the said Admiralty Court, and to do justice

justice between the said parties, notwithstanding the said *Supersedeas*. The Writ *de procedendo* runneth thus :

Henricus Octavus Dei gratiâ Angliæ et Franciæ Rex, fidei defensor, Dominus Hiberniæ, et in terra supremum caput Anglicanæ Ecclesiæ, clarissimo consanguineo suo Willielmo Com. Southampton Admirallo suo Angliæ, sive ejus locum tenenti vel deputato, salutem. Cum nuper ex quodam relatu Johannis Petite, de Abvile in Picardiâ, Andreæ Lord, et Daniel Lancel intellexerimus, quod vos præfatos Johannem, Andream, et Danielem coram vobis in Curia Admiralitatis nostræ de diversis contractibus, et aliis conventionibus infra Civitatem nostram London. et non super altum mare facti et emergenti in placitum ad sectam Ludowici Sutton contra formam diversorum statutorum inde in contrarium factorum, et provisorum traxistis : nos igitur statuta prædicta observari, et præfatos, Johannem, Andream et Danielem contra formam eorundem statutorum nullo modo placitari seu inquietari volentes, per breve nostrum vobis nuper mandaverimus quod vos præfatos Johannem, Andream et Danielem coram vobis in Curia Admiralitatis nostræ prædictæ, occasione in placitum non traberetis, sed quod vos placito illo coram vobis in Curia prædicta ulterius tenend. omnino supersederetis, et ipsos Johannem, Andream et Danielem contra formam statutorum prædictorum non molestaretis in aliquo seu graveretis, quibusdam tamen certis de causis nos moventibus, et specialiter pro eo quod ex parte prædicti Ludowici nobis graviter conquerenda est monstratum quod contractus et conventiones prædicti inter ipsum Ludovicum et præfatos Johannem, Andream et Danielem, habiti et conventi infra jurisdictionem curiæ Admiralitatis facti et contracti, et quod prædicti Johannes, Andreas et Daniel pro contractibus et conventionibus

A a

prædictis

prædictis in placitum prædictum contra formam statutorum prædictorum in Curia prædicta minimè tractari extitissent. Et ideo vobis mandamus quod in placito illo secundum legem et consuetudinem Curie Admirallitatis nostræ prædictæ procedatis, et partibus prædictis justitiæ complementum in hac parte haberi fac' dicto brevi nostro vobis prius inde in contrarium directo in aliquo non obstan. T. meipso apud Westm. xiv die Novembris, Anno regni nostri vicesimo nono.

Horpole.

* In the same year one *Lodowick Davy* sued *John Turner* in like manner upon several Maritime Contracts and Agreements made between them in the City of *London* ; likewise, and upon the said *Turner's* like complaint in the Chancery a *Supersedeas* was awarded, which in the same manner, and upon the same ground, was dissolved by a Writ *de procedendo* ; the Writ *de procedendo* is the same with the other, saving that they differ in the date and names, etc. I shall therefore spare the setting of it down.

In the thirty-first year of *Henry the Eighth*, *Myles Middleton*, *Ralph Hall*, and *Henry Dyconson*, Merchants of the City of *York*, being sued before *Robert Bishop* of *Landaff*, and others the King's Commissioners for his Northern Parts, upon Maritime businesses and contracts, the said *Middleton*, *Hall*, and *Dyconson* complained in Chancery ; and a *Supersedeas* was in the King's Name awarded out of the Chancery, directed unto the said Bishop, and the rest of the King's Commissioners, straitly charging and commanding them altogether, and without delay, to forbear all exa-

* An. 29 H. 8. in Fil. ut in Registro Adm. m. 34.

mination and cognizance in any Civil Causes, or Maritime Affairs, of or upon whatsoever Contracts, Pleas, or Complaints between Merchants, Masters, and Owners of Ships, and others whatsoever, with the said Merchants, Masters, or Proprietors, for any thing by sea or water in any manner whatsoever to be expedited or contracted, taking their rise or original either in the parts beyond the Seas, or upon the high Seas, or any where else where his high Admiral had jurisdiction, whether by Passage or Voyage at sea, or whatsoever way appertaining unto, or howsoever touching or concerning Maritime Affairs against the said *Miles Middleton, Ralph Hall, and Henry Dyconson*, by whomsoever before them or any of them moved, or howsoever to be moved, or attempted, remitting the parties (if they would sue) unto his Court of Admiralty of *England* for justice to be there administered according to the Maritime Laws.

The *Supersedeas* itself runneth in these words;

^b *Rex, etc. Reverendo in Christo patri Roberto Landavenli Episcopo, ac aliis Commissionariis nostris in partibus nostris Borealibus, et eorum cuilibet, salutem. Vobis et cuilibet vestrum striete precipimus vel et mandamus, quatenus ab omni examinatione et cognitione in aliquibus causis Civilibus, seu negotiis maritimis de et super quibuscunque contractibus placitis querelis inter Mercatores ac Dominos et Proprietarios navium, aut alios quoscunque cum iisdem Mercatoribus, Dominis, seu Proprietariis pro aliquo per mare vel aquam qualitercunque expediendum contractis sive in partibus ultramarinis, vel super altum mare, aut alibi, ubi magnus Admirallus noster habet jurisdictionem originem trahentibus, fetching their original, or arising from any other*

^b An. 31 H. 8. in Fit. prohib. et consult. in Registro Adm.

place where the Admiral hath Jurisdictionem, seu maris per transitum, seu voiagium aut negotia maritima quoquo modo respicientibus, vel qualitercunque tangentibus, aut concernentibus versus Milonem Middleton, Radulphum Hall, et Henricum Dyconson Civitatis nostræ Eboric. Mercatores, per quoscunque vel qualitercunque coram vobis seu vestrum aliquo motis, aut quovismodo movendis, seu attemptandis, omnino et indilate supersed. partes si litigare voluerint ad Curiam nostram Admirallitatis nostræ Angliæ pro justitia eis ibidem juxta leges nostras maritimas ministranda remittentes. T. meipso apud Westm. tertio die Februarii Anno nostri tricesimo primo.

Afterwards in the same year, in the same King's Reign, the said Bishop, and the rest of the said King's Commissioners being thus forbidden to meddle with matters of this nature, one *John Bates* a Merchant was sued before the Mayor and Sheriffs of the City of *York* for selling and delivering forty-two Fowder of Lead at the City of *Bourdeaux*, in the parts beyond the seas, and complaint being by him made in the Chancery, a *Supersedeas* was awarded in the King's name unto the Mayor and Sheriffs of his City of *York*, charging them likewise that they should altogether and without delay forbear all manner of cognizance in Civil and Maritime causes, contracted in the parts beyond the seas, upon the high sea, or in any place where his Admiral of *England* had jurisdiction, or from thence proceeding against the said *John Bates*, by what names soever called, by whomsoever, or in what manner soever begun, or to be begun for the selling and delivering of the said forty-two Fowders of Lead as aforelaid, in like manner as before, remitting the parties (if they would sue) to the Court of the Admiralty of
England

England for Justice to be to them there administered in that behalf.

The words of the *Supersedeas* are these;

Rex, etc. Majori et Vicecomitibus Civitatis nostræ Ebor. salutem. Vobis et cuilibet vestrum præcipimus, quatenus ab omni cognitione in causis civilibus et maritimis in partibus ultramarinis vel super alto mari, aut alibi, ubi magnus Admirallus noster Angliæ habet jurisdictionem, contractis et originem contrahentibus versus Johannem Bates Mercatorem, cujuscunque nomine censeatur, pro xlii le fowders plumbi in partibus ultramarinis apud Civitatem Burdugaliæ Venditioni expositis et deliberatis, per quoscunque vel qualitercunque motis seu movendis, omnino et indilate supersedeatis, partes si litigare voluerint ad Curiam Admiralitatis nostræ Angliæ pro justitiâ iis ibidem in hac parte ministranda remittentes. Teste meipso apud Westm. decimo quarto die Aprilis, Anno Regni nostri tricesimo primo.

Now I shall here by the way observe unto you this thing in particular out of this last *Supersedeas*, and out of these words, *apud Civitatem Burdugaliæ venditioni expositis*, that though by the course of the Common Law, if a man do deliver certain Goods unto another man, and doth intrust him with the keeping of them, for his the Owner's Use, or to be by him disposed of in one manner, and he either selleth them, or disposeth of them in another (I do conceive) he that so intrusted the other, may recover of him such damage as he hath sustained by such the other's sale or disposal. Yet if a Merchant doth intrust a Master of a Ship with his Wares or Merchandizes to be transported to any Port or Place beyond the Seas, for his own use, or for the use of any other particular man, to

^c An. 31 H. 8. in Fil. prohib. et consul. m. 56.

whom the same are by him consigned, or doth intrust him to dispose of them in any particular manner whatsoever; yet he may in many cases upon certain exigencies happening sometimes sell the same, sometimes he may dispose of them otherwise than he was appointed by the Merchant or Owner of them, and no damage shall by the course of the Civil and Maritime Laws be recovered of him; and herein those Laws have very many nice and curious distinctions: And for this Cause, when the Merchant very well knoweth that in such causes he cannot in the Admiralty Court recover any damages at all, he presently flieth to the Common Law, where he knoweth he shall recover damage against the Master, who was in no fault at all; in such manner as mutinous and disobedient Mariners (who have either through their misdemeanors, by the Civil and Maritime Laws, forfeited their wages, or some part thereof, or having received due correction from the Master at sea) do fly to the Common Law, either for recovery of their wages upon their Contract, which they have no ways deserved, or do there bring their Actions of Battery against the Master, when as he hath only given them such due Correction as the Civil and Maritime Laws do allow, that being a thing done at sea, where complaint cannot be presently made, or remedy had before a Magistrate (as may be at land) and therefore the like at land not to be allowed, in both which cases they oftentimes recover, and are gone on another Voyage before the Master can make proof of their misdemeanour done either beyond or upon the seas, which cannot oftentimes be possibly done, but by Commission out of the Admiralty Court, which turneth exceeding much to the disheartening and discouraging of Masters and Commanders
of

of Ships, which if not remedied, will be the utter Destruction of Navigation.

And another thing I shall observe in general from both the two preceding *Supersedeas's*, that all Contracts of and concerning Maritime Affairs made between Merchant and Merchant, Masters and Owners of Ships and Mariners, or between them or any other Person whatsoever, and in what manner soever, to be agitated or performed by sea, upon the seas, beyond the seas, or elsewhere within the Jurisdiction of the Admiralty, or taking their rise or original from thence, or do in any manner of wise touch, or concern the same, were not permitted in those times to be examined or adjudged in any Court but the Admiralty.

And these *Supersedeas's* in my Judgment are a full confirmation of the Exposition I have before rendered of the two before going Statutes, viz. that Contracts of this nature, though made at land, which do *maris per transitum, sive voiagium, aut negotia maritima quoquo modo respicere vel qualitercunque tangere et concernere*, and so do arise from things done, or to be done at sea, and not from things done, or to be done within the body of a County, do *de jure* belong unto the Cognizance of the Admiralty, and are in no wise by the said two Statutes taken from the same; and if by them not taken from thence, then doth not the Penalty of the other prementioned Statute of *Henry* the Fourth, run upon those that do sue in the Admiralty Court in causes of this nature, but only upon such as shall there sue upon Contracts made at land, of or concerning things done or to be done, or performed at land; and hereof you shall have further confirmation by Consultations

granted at the Common Law upon Prohibitions from thence upon false suggestions issued.

C H A P. IX.

That by Consultations granted from the Courts of Common Law at Westminster after Prohibitions formerly from thence obtained, Contracts made at land of and concerning Maritime businesses to be agitated and transacted at Sea, beyond the Seas, or upon the Ports and Havens, or of or concerning the same, are acknowledged to be cognizable in the Admiralty, and have been thereunto by the same remitted.

I Shall here proceed to shew that the Maritime Contracts, whereof I have hitherto treated in this third Book of this Treatise, and particularly exprest in the Title of this Chapter, have been by Consultations out of the Courts of Common Law at *Westminster*, after Prohibitions from thence obtained, determined and adjudged to belong unto the Admiralty.

One *Robert Baker* of the City of *London*, Vintner, sued one *John Maynard* in the Admiralty Court, upon a Contract made at land, of and concerning a thing done upon the Sea (as by the Consultation itself doth appear). But one *John Gilbert* Esquire, being Bail for the said *Maynard*, endeavouring to decline the Cognizance of that Court,
and

and hinder the just and due proceedings thereof, suggested before the King's Justices at *Westminster*, that he and one *William Cowick* his Proctor, were by the Officers of that Court cited to appear in the said Court in the said cause, pretending the the same to be a cause cognoscible before the said Justices, and not in the Admiralty Court, and obtained a Prohibition; after which the Libel in the said cause being exhibited before the said Justices (as likewise appeareth by the said consultation) and it being thereby plain that the same was for a Contract made concerning Sea business, it is said that the Prohibition issued out unadvisedly, *prædictum breve nostrum de prohibitione à dictâ curiâ nostrâ coram Justiciariis apud Westm. improvidè emanavit*, and concludeth with a *nolumus quod per hujusmodi malitiam et suggest. cognitio in præfata Curia nostra Admirallitatis taliter derogetur*. That the cognizance of that Court shall not be hindered by such malice or suggestion; and so the cause is thither remitted, by consultation bearing date the 11th of July in the 24th year of the said *Henry the Eighth*. *T. R. Norwich apud Westm.* which Consultation was directed to *Henry Duke of Richmond and Somerset* and *Earl of Nottingham*, High Admiral of *England, Ireland, Gascoine, Normain, and Aquitane*, and to *Arthur Plantaginet Knight*, Viscount *Lisse*, the said Duke's Vice-Admiral, or his Lieutenant, and also to *John Tregonwell*, Doctor of Laws, Official Commissary, or Judge of the High Court of the Admiralty, and to *Thomas Bagard*, Doctor of Laws, his Surrogate in the said Court.

See the Consultation itself as it follows.

^a *Henricus Octavus Dei gratiâ Angliæ et Franciæ Rex, fidei defensor, et Dominus Hiberniæ, dilecto*

^a *Fil. prohib. et consulta in Registro Admir. m. 79.*

et

et fideli nostro Henrico Duci Richmond et Somerset. et Comiti Nottingham. magno Admirallo Angliæ, Walliæ, Hiberniæ, Gasconiæ, Normaniæ et Aquitaniæ; necnon Arthuro Plantaginet Militi Vicecom. Lisle prædicti Ducis Vice-Admirallo, sive ejus locum tenenti, ac etiam Magistro Johanni Tregonwell legum Doctori in Curia principali Admirallitatis Angliæ Officiali, sive Commissario, et Magistro Thomæ Bagard legum Doctori, dicti venerabilis viri Johannis in dicta Curia Admirallitatis Surrogato, sufficienter et legitimè Deputato, eorumque cuilibet, salutem. Ex parte vestra nobis est intimatum, quod cum quidam Robertus Baker nuper de London Vintner, in dicta Curia nostra Admirallitatis coram vobis implacitaverit quendam Johannem Maynard, de et super quodam contractu de re facta super mare, quidam tamen Johannes Gilbert Armiger in hac parte cognitionem vestram fraudulenter et malitiosè satagens declinare, et debitum legis processum in eadem Curia nostra in parte illa impedire, ac suggerens in Curia nostra coram Justiciariis nostris apud Westm. ipsum Johannem Gilbert, ac quendam Willielmum Cowicke procuratorem suum per vos in prædicta Curia Admirallitatis Coram vobis super prædicto placito prætens. eundem Johannem Gilbert per inordinatam fatigationem in eadem Curia Admirallitatis coram vobis in dies trahi in placitum et per ministros vestros ea occasione citari, et coram vobis comparere adinde respondere faciendum totis viribus, et sententiam versus ipsos Johannem Gilbert et Willielmum Cowicke, et præmissis fulminare proponend. placitum quod inde per legem terræ in prædicta Curia nostra coram Justiciariis nostris apud Westm. et non coram vobis in dicta Curia nostra Admirallitatis pertinet ad eandem Curiam Admirallitatis trahere machinando in ipsius Johannis Gilbert grave dampnum, ac nostri

stri contempt. coronæque nostræ Regiæ exheredationis periculum ac contra legem et cons. regni nostri Angliæ, Breve nostrum de prohibitione minus rite vobis dirigi procuravit, cujus brevis prætextu vos in placito prædicto huc usque supersedistis in gravem libertatis prædictæ Curia nostræ Admirallitatis læsionem; et quia prædictum Breve nostrum de prohibitione à dicta Curia nostra coram Justiciariis nostris apud Westm. nuper inde improvide emanavit, prout per quendam libellum in dicta Curia nostra coram Justiciariis nostris apud Westm. post emanationem dicti brevis nostri de prohibitione ex parte vestra missum plenius apparet; ac quia nolumus quod per bujusmodi malitiam et suggestionem, cognitio in præfata Curia nostra Admirallitatis taliter derogetur, ideo vobis significamus quod in eadem causa procedere poteritis prohibitione præfata in aliquo non obstant. T. R. Norwiche apud Westm. xi. die Julii, Anno Regni nostri vicesimo quarto ^b.

One Richard Bell likewise sued one John Crayne in the Admiralty Court, for that the said John did at *Dartmouth*, within the Maritime Jurisdiction of the Admiralty, promise and bind himself to exonerate and keep indemnified the said Richard for taking or restoring of a certain Ship called the *Mary Fortune*, and the Apparel of the same, and the Goods and Merchandizes in her at the time of the taking of her; and that he the said Richard at the time of the taking of the said Ship, together with John Bell and others, was present against one John Destyron and other Spaniards, affirming themselves to be the Masters and Owners thereof.

And the said John Crane not setting forth what this Contract made at *Dartmouth* was for, but barely suggesting that he was sued upon a Con-

^b 24 Hen. 8. 11 Julii.

tract made at *Dartmouth* within the body of the County of *Devon*, and not within the Jurisdiction of the Admiralty, obtained a Prohibition.

But upon complaint of the said *Bell*, setting forth from whence the Contract arose, and for what the same was, it was held to be within the Maritime Jurisdiction of the Admiralty, and a Consultation was awarded, by which it is said to be *in ipsius Richardi Bell grave damnum, et legis libertatisque Admiralli lesionem manifestam*, to the grievous damage of the said *Richard*, and manifest wrong of the law and liberty of the Admiral; and further saith, *Et quia cognitionem Jurisdictionemque Admirallitatis in causis maritimis per hujusmodi callidas assertiones impedire noluimus, vobis jam significamus, etc.* And because we will not have the Cognizance and Jurisdiction of the Admiralty in Maritime causes to be hindered by such crafty assertions; we therefore, *etc.* as in the former Consultation.

I shall likewise set down this Consultation, which was in the time of *Henry the Eighth*, and so come to shew you some of those which were in the time of *Queen Elizabeth*.

Henricus Octavus Dei gratiâ Angliæ, Franciæ, et Hiberniæ Rex, fidei defensor, et in terra Ecclesiæ Anglicanæ et Hiberniæ supremum caput; nobili et præpotenti viro Domino Johanni Vicecomiti Lysle Baroni de Malpas et Somerey, præclari ordinis Garteri Militi, Domino Basset et Tyasse Magno Admirallo Angliæ, Hiberniæ, Walliæ, Villa et Merchiarum Calisiæ, Normanniæ, Gasconiæ et Aquitaniæ, seu ejus Deputato in Curia nostra Admirallitatis, salutem. Monstravit nobis in Curia nostra coram nobis Richar. Bell Com. Sufflex. quod cum idem Richardus nuper in Curia Admirallitatis coram vobis implacitasset Johannem Crane, de eo quod idem Johannes

Johannes ad certum tempus jam retroactum infra jurisdictionem maritimam promississet, et se extrinxisset ad exonerand. et indemnem conservand. ipsum Richardum, ab omni obligatione, et juris vinculo pro captione seu restitutione cujusdam navis vocat. The Mary Fortune, et apparatus ejusdem, ac bonorum et mercimoniorum in illa, tempore capturæ ejusdem, et pro eo quod idem Richardus tempore capturæ hujusmodi navis una cum quodam Johanne Bell, et aliis interfuisset erga quosdam Johannem Desticom et alios Hispanos asserent. se dominos et proprietarios præmissorum fuisse; idemque Johannes Crane nobis suggerendo dixerit quod hujusmodi contractus factus fuit apud Dartmouth infra corpus Comitatus nostri Devon. inter partes prædictas, et non infra jurisdictionem maritimam, vobisque superinde ad suggestionem ipsius Johannis Crane quoddam Breve nostrum de prohibitione in causa prædicta quod non procederetis, porrexerimus, cujus prætextu vos in causa illa huc usque procedere distulistis et adhuc differtis, in ipsius Richardi Bell grave damnum, et legis libertatisque Admiralli nostri lesionem manifestans. Et quia cognitionem jurisdictionemque Admirallitatis in causis maritimis per hujusmodi callidas assertiones impediri nolumus, vobis jam significamus quod in causa prædicta jam coram vobis inter partes illas pendentem, dummodo de causa maritima, et infra jurisdictionem Admiralli nostri juxta jura legis nostræ Angliæ terminan. agat. licite procedatis, ac procedere poteritis in causa illa quantum ad jurisdictionem Admirallitatis nostræ pertinet, brevi nostro de prohibitione vobis prius inde in contrarium directo in aliquo non obstant. T. R. Lyster apud Westm. decimo quarto die Julii, anno nostri Regni tricesimo octavo.

per Dominum Capitem Justic Rooper.

14 Julii, 38 H. 8.

In

In the time of Queen *Elizabeth*, *Christopher Turner* sued *Thomas Simpson* of *Beverly*, in the County of *York*, before *Matthew Dodsworth*, Batchelor of Laws, and Commissary of the Court of the Admiralty in the Northern Parts of *England*, and Judge of the Vice-Admiralty of *York*, upon a contract before that time made between them the said *Christopher* and *Thomas* ; and thereupon laid and articulated in the said Court, that in the Months of *April* and *May* 1586, they the said *Christopher* and *Thomas* had speech or talk between them, concerning certain quarters of Wheat and Rye, to the number of sixty-nine or thereabouts, namely forty and one quarters of Wheat, and twenty and eight quarters of Rye, whereof part was to be taken into a certain Ship called the *George* of *Beverley*, at a certain place called *Emot-land* upon the River of *Hull*, alias *Hull Water*, and the other part thereof to be taken into the said Ship at a certain place called the *Good Alehouse*, adjoining to the said River, to be from thence carried and conveyed in the said Ship by water, unto the City of *York*, and there to be delivered on Shipboard at a certain place called the *Queen's Stathe* at the said City, and further had talk of the freight or price to be paid for the carriage of the said quarter of Grain, and that they the said *Christopher* and *Thomas* bargained and agreed concerning the said carriage and transportation of the said Grain in the said Ship the *George*, in form following, viz. that the said *Thomas Sympson* should take and receive into the said Ship the said forty one quarters of Wheat, and twenty-one quarters of Rye at the said Place called *Emots-lands*, and the said other Place called the *Good Alehouse*, and should from thence transport and carry the same with all convenient speed to the
Queen's

Queen's Stathe aforesaid, being beneath the first Bridge of the River of *Owre* towards the sea, and there deliver the same on Shipboard; and that in consideration thereof, the said *Christopher Turner* did agree to and with the said *Thomas Sympson* for the transportation of every quarter of the said Grain, to pay the sum of ten pence of lawful Money of *England*; and further, that the said *Christopher Turner* in consideration that the said Grain might be more safely and securely transported and carried, than other his Grain before that time had been, and that the same might not be heated, wetted, or otherwise impaired, as before that time, other his the said *Christopher's* Grain had been in other lesser Vessels of his, the said *Thomas Sympson* promised and agreed to and with the said *Christopher*, that if the said *Christopher* should not deliver into the said Ship called the *George* sixty quarters of Grain, nevertheless in regard that Ship was of a great Burthen than other Ships of the said *Thomas Sympson's* were, he the said *Christopher* would pay to the said *Thomas Sympson*, or his Assignes, the whole freight for sixty quarters of Grain according to the rate of ten pence for every quarter of the aforesaid Grain; and if there should be more than sixty quarters of the said Grain, that then the said *Christopher Turner* should pay for every quarter above the number of sixty quarters according to the said rate of ten pence for every quarter thereof. And that the said *Thomas* in consideration thereof promised and covenanted to and with the said *Christopher Turner*, that no Grain or Goods of other men should be received into the said Ship in the said Voyage; and that the said Ship should be sufficiently manned and victualled, so that by reason thereof the said *Christopher Turner's* Grain might be

be safely transported and carried without any heating, wetting, or other impairing, *etc.*

Which cause was afterwards removed from the said Court of the Admiralty in the Northern parts, by way of Appeal made by the said *Thomas Symphon* on his part unto the supreme Court of the Admiralty of *England*, and there in the end of the 31st year of the said Queen's Reign depended undecided.

^d And the said *Thomas Symphon* in *Hillary* Term following suggested in the King's-Bench that the said *Christopher* had libelled in the high Court of the Admiralty, that the said Contract was made at *Beverley*, within the Body of the County of *York*, and that the said Contract was, that one part of the said Grain was to be received into the said Ship at a certain place called *Emot-land* upon the River of *Humber*, alias *Hull-water*, whereas indeed the said *Christopher* had libelled in the Court of Admiralty before the said *Matthew Dodsworth* in the Northern parts, that that Contract was, that the said Grain should be received into the said Ship at the said places called *Emot-land*, and *Good-Alehouse*, upon the River of *Hull*, alias *Hull-water*, and not upon the River of *Humber*, alias *Hull-water*: And whereas that Plea upon the said Libel only depended in the High Court of the Admiralty, by way of the Appeal aforesaid by him the said *Thomas Symphon*, in form aforesaid prosecuted, and otherwise he prayed a Prohibition from the said Court of King's-Bench, and procured the same to be directed unto the said High Court of the Admiralty, whereupon the said Court desisted.

^e But in *Trinity* Term following, the said Court of King's-Bench being informed of the whole mat-

^d Hil. 32 Eliz.

^e Term. Hil. prox.

ter, deduced and set forth in the original Libel, a Consultation was awarded, which in its own phrase (and in all things agreeable to what I have here set forth) repeateth the tenor, effect, and substance of the said Libel, with a *prout per libellum ipsius Christopheri plenius liquet*, as by the Libel of the said *Christopher* in that behalf doth more plainly appear, and concludeth, that notwithstanding the Prohibition for the causes before exprest, and for other the said defects in the said *Thomas Symphon's* Suggestion contained, and in the said Court depending, them moving with an *Ac similiter nolentes per hujusmodi falsas et callidas assertiones placita in Curia Admirallitatis prædicta pendent. diutius impedire*; where *nolentes* signifieth an absolute forbidding or checking rather than unwilling that the said Pleas in the Court of Admiralty depending should any longer be hindered by such false and crafty Assertions, and therefore signified that the said Court of Admiralty might lawfully proceed in the said cause between the said parties, and do and perform all other things on that behalf, which the said Court did know did belong thereunto, etc.

Take here this Consultation more in it's own language at large, and I shall set forth but some few more, and those as briefly as I can. This runneth in these words:

Elizabetha Dei gratia Angliæ, Franciæ, et Hiberniæ Regina, fidei defensor, etc. venerabili et egregio viro magistro Julio Cæsari legum Doctori, prænobilis et præpotentis viri Car. Domini Howard, Baronis de Effingham, præclari ordinis Garteri Militis, magni Admiralli Angliæ, Hiberniæ, Walliæ, et Dominiorum et Insularum earundem, ville Calis et Merchiarum ejusdem, Normaniæ, Gasconiæ, et Aquitaniæ, Glassisque et marinorum dictorum reg-

narum Angliæ et Hiberniæ præfecti generalis, locum tenenti generali, ac supremæ Curie Angliæ Admirallitatis Judici et Præsidenti, ejusve Surrogato cuicunque, salutem. Cum Christopherus Turner nuper in Curia Admirallitatis coram Matthæo Dodsworth, in legibus Baccalaureo, Commissario Curie Admirallitatis in partibus Borealibus Angliæ, ac Judice Vice-Admirallitatis, Com. Eboracen. implacitasset, et articulat. fuit versus quendam Thomam Sympson nuper de Beverly in Com. Eborum super quodam contractu inter ipsos Christopherum et Thomam ante tum fact. et super inde in eadem Curia posuit et articulat. quod in mensibus Aprilis et Maii, Anno Domini millesimo quingentesimo octogesimo sexto, iidem Christopherus et Thomas habuerint Colloquium inter eos de quibusdam quarteriis tritici et siliginis, ad numerum sexaginta et novem vel eo circiter, videlicet quadraginta unius quarteriorum tritici, et viginti octo quarteriorum siliginis, unde pars accipienda fuisset in quandam navem vocatam The George of Beverley ad quendam locum vocatum Emotland super Rivulum de Hull, alias dictum Hull-water, et alia pars inde accipiend. fuisset in eandem navem, ad quendam locum vocatum The Good Alehouse adjungentem eidem Rivulo, et ab inde abcarari et conveyari in eadem navi per aquam usque Civitatem Eborum, et ibidem deliberari super le shipboard apud quendam locum vocat. The Queen's Stath, infra eandem Civitatem, et ulterius habuissent Colloquium de salario et pretio solvend. pro carriagio dictorum quarteriorum granorum prædictorum, et ulterius quod ipsi iidem Christopherus et Thomas convenissent et agreassent concernen. prædictum carriagium et transportationem granorum prædictorum in eadem nave vocatâ The George infra sequen. videlicet quod prædictus Thomas Sympson caperet et reciperet in prædictam navem, prædicta quadraginta unum quarteria tritici,

tritici, et viginti octo quarteria siliginis, ad prædictum locum vocat. Emot-lands, et ad prædictum alium locum vocatum The Good Alehouse, et ab inde transportaret et carriaret eadem cum convenien. celeritate ad le Queen's Stathe prædict. stantem et existentem infra primum pontem rivuli de Owre versus mare, et ibidem eadem deliberaret super le Shipboard, et quod in consideratione inde prædictus Christopherus Turner convenisset et consensisset ad, et cum præfato Thoma Sympson pro transportatione cujuslibet quarterii granorum prædictorum, solvere summam decem denariorum legalis monetæ Angliæ, et ulterius quod idem Christopherus Turner in consideratione quod grana illa magis salvo et secur. transportari et carriari potuissent quam alia grana sua antebac fuissent, et quod eadem non essent calefacta, vel malefacta, vel aliter pejorat. Anglicè Impaired, prout ante tempus illud alia grana ipsius Christopheri fuissent in aliis minoribus vasisbus ipsius Thomæ Sympson, promississet, et convenisset ad et cum eodem Thoma quod si dictus Christopherus non deliberaret in prædictam navem, vocat. The George, sexaginta quarteria granorum, nichilominus pro eo quod eadem navis fuit navis majoris operis quam aliæ naves dicti Thomæ Sympson fuissent, ipse idem Christopherus solveret præfato Thomæ Sympson, vel assignatis suis plenum stipendium, Anglicè, The whole freight, pro sexaginta quarteriis granorum juxta ratam decem denariorum pro quolibet quarterio granorum prædictorum, et si plura forent quam sexaginta quarteria granorum prædictorum, quod tunc idem Christopherus Turner solveret pro quolibet quarterio ultra numerum sexaginta quarteriorum juxta dictam ratam decem denariorum pro quolibet quarterio inde, et quod idem Thomas in consideratione inde promississet et convenisset ad et cum dicto Christo phero Turner quod grana sive bona nulla aliorum hominum acciperentur in eandem

navem voïagio prædicto, et quod prædicta navis sufficient. viritat. et esculat. esset, Anglicè manned and victualled ; Ita quod ratione inde grana dicti Christopheri Turner salva transportari et carriari potuissent sine calefactione, malefactione, vel alia pejoratione, Anglicè Impairing, etc. prout per libellum ipsius Christopheri inde plenius liquet ; quod quidem placitum postea à prædicta Curia Admirallitatis in partibus Borealibus per viam appellationis per præfatum Thomam Sympson in ea parte factæ coram vobis remot. fuit, et adhuc in supremâ Curiâ Admirallitatis Angliæ coram vobis jam pendet indecis.

Cumque præfatus Thomas Sympson postea, sc. termino sancti Hillarii ultimo præterito venisset in Curia nostra, suggerens, quod prædictus Christopherus in Curia Admirallitatis coram vobis libellasset quod contractus ille fuit, quod una pars granorum prædictorum per contract. illum recipiend. fuisset in navem prædictam ad quendam locum vocat. Emot-land super rivulum de Humber, alias Hull-water, ubi reverà idem Christopherus libellavit in prædicta Curia Admirallitatis coram præfat. Matthæo Dodsworth in partibus Borealibus quod contractus ille fuit quod grana prædicta accipienda fuissent in eandem navem ad prædicta loca vocat. Emot-land et Good Alehouse super prædictum rivulum de Hull, alias Hull-water, et non super rivulum de Humber, alias Hull-water, et ubi revera placitum illud super eodem libello coram vobis per viam appellationis prædictæ, per præfat. Thomam Sympson in forma prædicta protegent, tantummodo pendebat, et non aliter, quandam prohibitionem nostram in eadem Curia nostra coram nobis impetravit et vobis dirigi procuravit, cujus quidem prohibitionis nostræ prætextu vos in causa prædicta distulistis et adhuc differtis prout decet. Nos tamen ob causas prædictas superius expressas et alias defec-tiones in suggestionem ipsius Thomæ Sympson prædict.

coram

coram nobis penden. contend. nos movend. ac similiter nolentes per bujusmodi falsas et callidas assertiones placita in curia Admirallitatis prædicta coram vobis penden. diutius impediri, vobis significamus quod in causa prædicta inter partes prædictas licitè procedere poteritis, ac omnia alia facere et peragere in ea parte quæ ad forum Admiralitatis noveritis pertinere brevi nostro de prohibitione inde prædict. vobis prius in contrarium in ea parte direct. in aliquo non obstante. ^f T. C. Wray. apud Westm. primo die Junii Anno nostri regni tricesimo secundo.

Rooper et Rooper.

And in the same Queen's Reign *John Buckhurst* infra fluxum et refluxum maris, within the ebbing and flowing of the sea upon the River of *Thames*, arrested the Ship the *Spark*, alias the *Michael* and *John* of *Plymouth*, as belonging unto *George Ascoth*, and citeth him in specie, and all others in genere, and libelleth, that in the Months of *August*, *September*, etc. 1597. the said *George Ascoth* was Owner of the said Ship, and had an intent to make a Voyage unto the parts beyond the seas, and to the effect of expediting the Voyage, bought of him the said *Buckhurst*, or his servant, certain necessities for his Voyage, to the value of 72 *l*, and received them, and had them into the Jurisdiction of the Admiralty, etc.

Zacharias Ashton put in Bail to answer the Action, and had the Ship released, and afterwards upon suggestion that upon the tenth of *March*, 39 *Eliz.* for the space of two Months before *George Ascoth* was in the Parish of *St. Mary le Bow*, in the Ward *le Cheap* London, lawfully possessed of this Ship, Tackle and Furniture, and that

^f 1 June 32 *Eliz.*

B b 3

upon

upon the eleventh of *March* he sold her unto him for 400 *l.* and that the Ship belonged unto him : And thereupon obtained a Prohibition.

The Prohibition alledgeth the Statutes of the 13th of *Richard* the second, the 15th of *Richard* the second, and the first of *Henry* the fourth, *quodque post editionem Statutorum prædictorum, scilicet decimo Martii, anno, etc. apud London. in parochia beatæ Mariæ de Archibus in Warda de Cheap London. ac per spatium duorum mensium ad tunc præantea prædictus Georgius Ascogh legitimè possessionatus fuisset de nave prædicta vocat. The Spark, alias The Michael and John, portus de Plymouth, ac apparat. accession. et ornament. ad eandem navem tunc spectan. ad valentiam trecentarum librarum monetæ Angliæ, ut de bonis et catallis suis propriis, et sic inde possessionatus existen. Idem Georgius postea, scilicet undecimo die Martii, anno supradieto apud London prædict. in Parochia et Warda prædictis pro summa quadrigent. librarum legalis monetæ Angliæ, eidem Georgio per præfatum Zachariam, ad tunc solveret, etc. contraxisset et vendidisset præfato Zachariæ navem prædictam ac prædict. apparatus, etc. Quodque prædictus Johannes Buckhurst inde non ignarus machinans cognitionem placitorum quæ ad etc. quandam prohibitionem in Curia nostra coram nobis, ne etc. prosequit' fuerit, etc.*

But no proof being made by the said *Ashton* that he had so bought the said Ship, or that she was his, and not the said *Ascogh's*, and the said Court of King's-Bench being informed that the effects and substance of the said Libel was as is before expressed; and the Cause being held and adjudged cognoscible in the Admiralty Court, a Consultation was awarded, which saith that the Prohibition was in *Johannis Buckhurst grave damnum et libertatis Curie Admiralitatis læsionem manifestam* ; to the grievous damage

damage of the said *Buckhurst*, and manifest wrong of the liberty of the Admiralty Court, and therefore concluded as the former did, with a *Nolentes cognitionem quæ ad Curiam Admirallitatis pertinet in hac parte per hujusmodi falsas et callidas assertiones diutius impediri*, etc.

In the Body of which Consultation, the effect and substance of the Libel is thus exprest:

Imprimis videlicet quod mensibus Augusti, Septembris, etc. Anno Domini millesimo quingentesimo nonagesimo septimo jam curren. eorumvè mensium quolibet pluribus, uno sive aliquo, præfatus Georgius Ascogh fuit, erat nec non tempore aresti ab hac curia interposit. ac in præsentis est Dom. Proprietarius et legitimus possessor navis vocat. The Spark, alias The Michael and John, portus Plymothiæ ejusq; apparatus et ornamentorum, seu saltem medietatis, seu alicujus partis dictæ navis, proque tali, et ut talis fuit et erat communiter dictus, tentus, habitus, nominatus et reputatus. Item quod annis et mensibus prædictis eorumvè uno sive aliquo, præfatus Georgius Ascogh intentionem habuit profectionem faciendi in partes ultramarinas, et ad effectum expediendi voia-gium sive profectionem prædictam, et paulo ante decessum ejusdem pro necessariis quibusdam suis, et in itinere sive voiaagio prædicto ab antedicto Johanne Buckhurst, aut ejus famulo ad usum ejusdem Georgii nonnulla bona ad valentiam septuaginta duarum librarum legalis monetæ Angliæ, etc.

In the same manner *John Fox* arrested the same Ship upon the River of *Thames*, as belonging unto the said *George Ascogh*, and libelled against the said *Ascogh* in the same manner, for certain necessities sold unto him to the Value of 50*l.* which he received, and had into his possession within the Jurisdiction of the Admiralty, and the said *Zachary Ashton* put in Bail to the said Action, in such man-

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ner as in the other Cause, and afterwards upon the like suggestion made unto the said Court of the King's-Bench, as he had there made in the said former Cause, he likewise obtained a Prohibition in this cause as in the other ; but the said Court being likewise by the Libel in this Cause informed of the nature of the Cause, a Consultation was awarded in this Cause as in the other, and concludeth in like manner as the other did, that the said Prohibition was in *grave damnum Johannis Fox, et libertatis Curie Admirallitatis lesionem manifestam*, and with a *Nolentes*, etc. as in the former, and both the suggestion, and substance and effect of the said Libel are inserted in the body of the Consultation upon the File in the Registry of the Admiralty with the others, as it and they came directed from the said Court of King's-Bench thither under seal.

42 *Elizab. William Rolfe* of *Woolwich* in the County of *Kent* did contract and agree with *Thomas Freeman*, Shipwright, upon a certain rate for day-wages for himself and his Servants, and for certain other materials or necessities for and towards the building of a certain Ship or Pinnace for him the said *William Rolfe*, according to which agreement the said *Freeman*, and one *Arthur Argill* and others as his Servants, did afterwards in the Month of *April* in that year, at *Woolwich* in the County of *Kent* for divers days labour in performance of the said work in their art, about the structure or building of a small Ship or Pinnace for the said *William*, and built a great part of the same ; and the said Ship or Pinnace being built, she was named or called by the said *William*, *The Anne and Francis*, and the said *William* being in possession of her as his own proper Vessel, and standing so possess, he he afterwards, to wit, upon the eighth day of
March,

March, in the forty-third year of the said Queen, at *Woolwich* aforesaid in the County of *Kent*, for a certain sum of money unto him then and there paid by one *Hugh Lydyard*, sold and delivered the said Ship unto him the said *Hugh*, by which means the said *Hugh* upon the said eighth of *March* in the year aforesaid, became possessed of the said Ship or Vessel, as his proper Ship or Vessel; and the said *Thomas Freeman* caused the said Ship or Vessel, being upon the River of *Thames*, to be arrested, by which means the said *Hugh Lydyard* was constrained to appear in the *Admiralty Court*, and to answer unto the said *Thomas Freeman* after upon a Contract of or concerning the retaining or hiring him the said *Thomas*, being the Shipwright, to make and build the said Ship, and of and concerning several promises and undertakings of the said *Hugh* and *William* made unto the said *Thomas* in the months of *March*, *April*, etc. in the year, etc. concerning the payment of divers sums of money to be paid unto the said *Thomas* for his Wages and Salary, for his work about the structure and building of the said Ship or Vessel, and for meat and drink of other Workmen that wrought upon the said Work, and for other necessaries for the fitting of the said Ship, bought and bestowed thereon by the said *Thomas*.

The said *Hugh Lydyard* alledging the Statutes of the thirteenth and fifteenth of *Richard* the second, and the second of *Henry* the fourth, unto the Court of Common-Pleas, and there suggesting the same fact, and further suggesting the same to be done, and the said Contracts to be made within the body of the County of *Kent*, and not within the Jurisdiction of the *Admiralty*; and that therefore the Action was brought contrary to the form of the said Statutes, and procured a Prohibition to the Court
of

of the Admiralty; but upon Consideration of the whole matter, the said Court upon the last day of January, in the forty-fifth year of the said Queen's reign awarded a Consultation, and remitted the said Cause to the Admiralty Court.

And now in regard that the fact in this case was agreed on both sides, and therefore no repetition made of the Libel in the Body of the Consultation, the right of jurisdiction and power of the cognizance of the Cause being only in question, and in regard this Prohibition and Consultation issued out of the Court of Common-Pleas, and the former mentioned out of the King's-Bench, take this Consultation at large as it came to, and remaineth in the Registry of the Admiralty.

Elizabetha Dei gratiâ Angliæ, Franciæ et Hiberniæ Regina, fidei defensor, etc. *Dilecto sibi* Julio Cæsari Legum Doctori à libellis supplicum nostrorum Magistrorum uni Curie nostræ Admiralitatis Angliæ Judici sive præfiden. ac locum tenen. ejusdem legitime constitut. aut, etc. salutem. Cum Hugo Lydyard Gen. in Curia nostrâ coram Justiciariis nostris apud Westm. suggerit quod cum per quendam actum in Parlamento Domini Richardi nuper Regis Angliæ secundi post conquestum apud Westm. anno Regni sui tertio decimo tent. edita inter alia inactata sub auctoritate ejusdem Parliamenti, quod Admiralli et eorum Deputati se ex tunc de aliqua re facta infra regnum Angliæ, nisi solummodo de rebus factis super altum mare, prout tempore Domini Edvardi Regis avi prædicti quondam Regis Richardi secundi usum fuisset nullatenus intromittant, cumque etiam per quendam alium actum in Parlamento prædicti quondam Regis Richardi secundi anno regni sui quinto decimo tent. edit. inter cætera declarat. ordinat. et statulat. fuisset auctoritate ejusdem Parliamenti, quod de omnibus contractis, placitis et querelis, ac de omnibus aliis rebus

rebus factis, sive emergentibus infra corpus Comitatus, tam per terram quam per aquam, ac etiam de wrecco maris Curia Admirallitatis nullam habeat cognitionem, potestatem nec jurisdictionem, sed quod essent omnia hujusmodi contract. placita et querelæ, ac omnia alia emergentia infra copora Comitatus, tam per terram quam per aquam, ut prædictum est, ac etiam wreccum maris triat. terminat. discuss. et remediat. per leges terræ, et non coram Admirallo, nec per Admirallum, nec ejus locum tenentem, quodque post editionem statutorum prædictorum sc. primo die Aprilis, Anno regni nostri quadragesimo secundo, quidam Willielmus Rolfe apud Woolwich in Comitatu Cantix infra corpus ejusdem Comitatus, et non super altum mare, nec infra jurisdictionem Admirallitatis, retinisset quendam Thomam Freeman tunc naupegum existen. ad quandam naviculam vocat. a Pinnace pro eodem Willielmo construend. et fabricand. vel saltem in structurâ et fabricatione hujusmodi naviculæ ad laborand. et operam navand. per se et servien. suos in arte suâ pro merced. per diem eidem Thomæ per præfatum Willielmum solvend. virtute cujus retentionis idem Thomas et quidam Arthurus Argill et alii ut servien. sui postea, scilicet sexto die ejusdem mensis Aprilis apud Woolwich prædictam, in prædicto Comitatu Cantix infra corpus ejusdem Comitatus, et non super altum mare, nec infra jurisdictionem Admirallitatis, in et circa structuram et fabricationem unius naviculæ prædictæ Willielmo per diversos dies laboraverunt et operam navarunt in arte suâ, et magnum partem naviculæ illius construxerunt, cujus prætextu navicula illa apud Woolwich prædict. infra corpus Comitatus prædicti constructa fuit, quæ quidem navicula postea denominat. et appellat. fuit per præfatum Willielmum, The Anne and Francis; ac quod idem Willielmus sic de navicula illa
fuit

fuit possessionat. ut de navicula propria, et sic inde possessionat. existen. idem Willielmus, postea, scilicet octavo die Martii anno quadragesimo tertio supradicto, apud Woolwich prædictam infra corpus Com. Cantuæ, prædictæ, et non super altum mare, nec infra jurisdictionem Admirallitatis naviculam prædictam pro quadam pecuniæ summa ei tunc ibidem per ipsum Hugonem solut. vendidit, et deliberavit eidem Hugoni, per quod idem Hugo prædicto octavo die Martii anno quadragesimo tertio supradicto apud Woolwich prædictam, videlicet in rivo Thamisiæ infra corpus ejusdem Com. Can. possessionat. fuisset de eadem navicula appellat. The Anne and Francis, ut de navicula sua propria; prædictus tamen Thomas Freeman statuit. et leges prædict. minime ponderans, nec non diversa statuit. contra levationem, sustentationem et manutentionem querelarum et sectarum in propria vel alibi nuper edit. et pravis. minime verens, sed contra eadem machinans dictum Hugonem indebite prægravare, opprimere, et fatigare, naviculam ipsius Hugonis prædictam in rivo Thamisiæ prædictæ, videlicet apud Woolwich infra corpus prædict. Com. Canc. caute et subdole, sub nomine et specie naviculi prædicti Willielmi Rolfe per ministros prænobilis Caroli Comitis Nottingham. Baronis Howard de Effingham præclari ordinis Garterii Militis dom. locum tenentem nostri Comitatus nostrorum Suffex et Surrey Constabular. nostri Honeris et Castri nostrorum de Windesfor. Dom. magni Admiralli Angliæ, Hiberniæ, et Walliæ, ac dominiorum et insularum, eorumve villæ Calisiæ, et Merchiarum ejusdem Norman. Gascon. et Aquitan. classique et marin. dictorum regnorum Angliæ et Hiberniæ præfecti general. distringi et attachiari fecit, ac capi et attachiari procuravit, ac eo prætextu prædictum Hugonem coram vobis, apud Southwark in Com. Surrey comparere et interesse astrinxit
ipsum

ipsum Hugonem ad respondend. coram vobis præfat. Thomæ Freeman, de quibusdam contractibus suppositis inter dictum Thomam Freeman ex una parte, et eundem Hugonem et præfatum Willielmum Rolfe separatim ex altera, fuisse fact. infra jurisdictionem Admirallitatis de et concernen. retentione prædicti Thomæ tunc naupegi existen. ad construend. et fabricand. naviculam prædictam, ac de et concernen. separales promissiones et assumptiones prædictorum Hugonis et Willielmi eidem Thomæ fieri supponit, mensibus Martii, Aprilis, Maii, Junii, Julii, Augusti, et Septembris, Anno Domini millesimo sexcentesimo, eorumve mensium quolibet uno sive aliquo de solutione diversarum denariorum summarum eidem Thomæ fiend. tam pro mercede et salario suis pro operâ suâ, in et circa structuram et fabricationem naviculæ illius faciend. quam pro salario esculent. et poculent. aliorum opificum in eadem opera laborant. ac pro mercemoniis, et aliis necessariis pro navicula illa construend. per ipsum Thomam empt. et impens. conabatur et machinabatur, idemque Thomas Freeman in eadem Curia Admirallitatis totis viribus contra ipsum Hugonem in præmissis prosequeretur caute et subdole in eadem Curia Admirallitatis libellando versus ipsum Hugonem, et præfatum Willielmum Rolfe; inter alia quod ipse idem Thomas Freeman spem alias ad recuperand. quasdam denariorum summas quas idem Thomas versus præfatum Hugonem tunc in eadem Curia Admirallitatis ex separabilibus causis et contractibus prædictis exigebat nisi per arrestationem naviculæ prædictæ nullo modo habuit, ideo eandem naviculam infra jurisdictionem Admirallitatis Angliæ auctoritate Curie illius Arrestari fecit, ac prædictus Thomas Freeman prætextu præmissorum ipsum Hugonem per diffinitivam dictæ Curie Admirallitatis sententiam de et super præmissis condemnari fecit, ac eundem

Hugonem ad solvend. denar. per præfatum Thomam in eadem Curia Admirallitatis petit. per executionem sententiæ prædictæ compellere, vel saltem eos de naviculâ ipsius Hugonis prædictâ levare totis suis viribus conabatur et indies machinabatur in nostri contemptum et ipsius Hugonis dampnum, præjudicium, depauperationem et gravamen manifest. et contra formam et effectum statutorum prædictorum, cujus prætextu nos quandam prohibitionem ad petitionem præfat. Hugonis concessimus, et illam vobis dirigi fecimus, cujus prætextu, vos in causa prædictâ procedere distulistis, et adhuc differtis; quibusdam tamen de causis Justic. nostris apud Westm. specialiter moven. vobis significamus quod vos in præmissis legitime procedere poteritis Brevis nostro de prohibitionem vobis inde directo in aliquo non obstan. T. E. Anderson apud Westm. tricesimo primo die Januarii, Anno regni quadragesimo quinto ^b.

Cuick

Scot.

Now it hereby appeareth, that though this Contract was made at land, and the Ship built at land, yet because both the Contract and Work did arise from the Sea, sailing and transportation of Men, Wares and Merchandizes, being the principal or only end both of the contract and the work, and the Ship being to be imployed at sea, both the contract and the work were adjudged to be within the jurisdiction and cognizance of the Admiralty.

Yet I must not let one observation slip, which is here to be observed; and that is, that this Consultation and all others which repeat those Prohibitions which have been founded upon the three before-mentioned Statutes, shew that all those Prohibitions have in their *Latin* rendered the Statute of

^b 1 Jan. 45 Eliz.

the thirteenth of *Richard* the second, to prohibit the Admiral for meddling with any thing but a thing done *super altum mare*, upon the high sea; whereas *Poulton's* Translation rendereth it only upon the sea; and the original rendereth only *sur le meer*, which is upon the sea in general, as well one part as another, as well upon an arm of it, as upon any part else of the body; besides what follows, viz. *Solonc ce que ad estre duement use en temps du noble Roy Edward ail nostre*, as I have already observed, and shall therefore pass to the next.^d

Richard Husbands of London, Draper, sold unto *Adam Bonner*, Master and Owner of one sixteenth part of the ship the *Advantage* of London, certain cloth for the use of that Ship, to the value of twenty Pounds; the money not being paid, *Husbands* arresteth this sixteenth part of the said Ship, with Tackle and Furniture thereunto belonging, and citeth *Bonner* specially, and all others in general, to answer unto him in the Admiralty Court, for the said Debt; *Bonner* dieth, *Rachael* his Wife taketh Administration, and the Suit proceeds against her.

Richard Dove, Owner of the other Parts or Residue of the said Ship, became Bail for the said *Bonner's* sixteenth part. And afterwards upon suggestion in the King's Bench, that the Debt was for Cloth and other things bought by the said *Bonner* of the said *Husbands* in *Cheapside*, London, and that the said Ship being freighted and laden in the Parish of *St. Mary Bow* in the Ward of *Cheap* London, with Provision of the Queen's to go for *Ireland*, was there arrested by the said *Husbands*, and alledging that the said Action was brought in the Admiralty Court by the said *Husbands* against the said *Bonner*, contrary to the

^d Sup. lib. 3. cap. 2.

three before mentioned Statutes, etc. And thereupon obtained a Prohibition. But upon due Information made unto the said Court, setting forth the effect and contents of the Libel, a Consultation was upon the 25th of April, in the third year of King James awarded, and the cause returned unto the said Court of the Admiralty, there to be duly proceeded in. The Consultation plainly expressing that the matter contained in the Suggestion was no ways sufficient to maintain the Prohibition. The Consultation runneth thus:

Jacobus Dei gratiâ Angliæ, etc. venerabili et egregio viro Julio Cæsari. Monstravit nobis Richardus Husbands de London, Draper, quod cum ipse idem Richardus in Curia nostra coram vobis per processum extra dictam Curiam Admirallitatis prædictæ debito modo confectus emanand. arrestari procurasset decimam sextam partem cujusdem navis vocat' The Advantage of London, ac apparatusum, etc. Et ulterius citari procurasset quendam Adamum Bonner, Dom. etc. in specie, ac omnes alios quoscunque, jus, titulum et interesse haben. in genere, vel haberi prætenden. etc. præfato Richardo Husbands de et pro quolibet debito viginti librarum eidem Richardo Husbands, etc. per quendam contractum etc. infra jurisdictionem Admirallitatis Angliæ factum debite responsur' postea pendente secta illa prædictus Adamus Bonner obiit intestat. et post mortem Administratio, etc.

Quidam Richardus Dove suggerens in Curia nostra coram nobis quod cum in statuto in Parlamento Dom. Richardi nuper Regis Angliæ secundi, etc. setting forth the three before mentioned Statutes. Quodque vicesimo die Novembris, anno regni Domine Elizabethæ Regina Angliæ quadragesimo tertio, apud London, viz. in Parochia Beatæ Mariæ de Arcubus in Warda de Cheap, prædictus Adamus Bonner

Bonner indebitatus fuisset eidem Richardo Husbands pro pannulaneo et aliis rebus ad tunc et ibidem præfato Adamo per præfatum Richardum Husbands vendita et deliberat. in summa vigint. librarum legalis monete Angliæ; Quodque præfatus Adamus Bonner prædicto vicesimo die Novembris, anno quadragesimo tertio supradicto apud London prædict. in Parochia et Warda prædicta fuisset Dom. proprietarius et possessor legitimus prædictæ decimæ sextæ partis navis vocat' The Advantage of London, ac apparatus, etc. Ac quod prædictus Richardus Dove adtunc et ibidem similiter fuisset Dom. Proprietarius et legitimus possessor totius resid. prædictæ navis, etc. Quodque etiam præfatus Richardus Husbands postea, scilicet vicesimo die Novembris, anno regni dictæ dominæ Elizabethæ nuper Regina Angliæ quadragesimo tertio superdict. apud London prædict. in Parochia et Warda prædicta prædictam decimam sextam partem navis prædictæ adtunc et ibidem onerat' existent' cum provisione dictæ dominæ Elizabethæ nuper Regina Angliæ ad navigandum pro regno Hiberniæ ac prædictorum apparatus, etc. pro dicto debito præfati Adami Bonner arrestari procurasset, ac super inde præfatus Richardus Dove, etc. apud London prædict. in Parochia et Warda prædict. fore fidejussorem pro prædicta nave compulsus, et coactus fuisset aliter, etc. quandam prohibitionem nostram, etc.

Quia tamen videtur Curia nostræ coram nobis, quod suggestio prædicta prædicti Richardi Dove in Curia nostra coram nobis in hac parte exhibit. materiaque in eadem contenta minus sufficien' in lege existunt ad Breve nostrum de Prohibitione in hac parte manutenend'. Et quia nolumus cognitionem, quæ ad Curiam Admirallitatis prædict. spectat et pertinet, per hujusmodi insufficientes assertiones diutius impediri, vobis significamus quod in causa prædicta, etc.

T. J. Popham apud Westm. *viceſimo quinto die Aprilis, anno regni noſtri Angliæ, Franciæ, et Hi-berniciæ tercio, et Scotiæ viceſimo octavo.*

I. L.

Reoper.

I ſhall inſtance only in one or two more of latter time, and that very briefly.

Claas Cornelius Borſs by Charter-party let to freight the Ship the *Young Swan of Horn* in *Holland*, whereof he was Maſter and part Owner, unto *George Rook* and *Robert Grove* for a Voyage from *London* to ſeveral Ports and Places beyond the Seas, and from thence to the Port of *London*. Borſs after the return of the ſaid Ship, ſueth *Rooks* and *Grove* in the Admiralty Court for his freight due by the ſaid Charter-party, and likewise for demorage. *Rooks* and *Grove* ſuggeſt in the King's Bench, that the Charter-party was made in the Pariſh of *St. Mary le Bow* in the Ward *le Cheap*, and alledged the three before mentioned Statutes, and that they had performed the Covenants of the ſaid Charter-party, and that the Action brought againſt them in the Admiralty was contrary to the ſaid Statutes, and obtained a Prohibition.

But the ſaid Court being fully informed *Termino Paſce nono Caroli*, a Conſultation was awarded with a *Nolentes, etc.* as in the former. And further, *quod in cauſa prædicta quatenus de non performance conventionum prædictarum quoad nautum et morationem coram vobis duntaxat agatur, licite procedere poteritis, et ulterius facere quod ad Curiam Admirallitatis prædictæ noveritis pertinere, dicta prohibitionem noſtram non obſtante.* T. T. Richardson apud Westm. *tertio die Junii, Anno regni noſtri nono-Henley et Whigſwick.*

In like manner *David Guy* of *Disart* in *Scotland* let to freight by Charter-party the Ship the *Grace of God* of *Disart*, then lying at Anchor in the River of *Thames*, to *John Delabar* and *James Hope*, upon a Voyage; upon which *Guy* sued the said *Delabar* and *Hope* in the Admiralty Court for his freight thereby contracted for, and unpaid. *Hope* and *Delabar* setting forth in the King's Bench, that the Charter-party was made in *St. Michael Cornhill*, and alledging the three before mentioned Statutes, and that the said Action was brought in the said Admiralty Court contrary to the said Statutes, obtained a Prohibition. But in *Easter Term* ^k, in the 9th year of King *Charles*, a Consultation was awarded as in the other.

Hence I do observe that all these Judges, which granted these before mentioned Consultations, have heretofore afforded the before mentioned Statutes the same interpretation that I have since gathered, and in this Treatise set down, viz. that a Contract, whether made at land or at sea, if the same doth arise from a business to be done or performed at land, the same is to be tried by the Law of the Land: But a Contract, whether made at sea or at land, if the same doth arise from a business to be done or performed by or at sea, or beyond the sea, the same is cognoscible in the Admiralty Court ^l. For upon the granting these Consultations, the question was not whether either the Contracts or the Charter-parties were made at sea, or at land, or whether they were made in the Parish of *St. Mary le Bow*, or *St. Michael Cornhill*, or not; but whether the same were Maritime contracts, or concerned Maritime business or not, and so within the Jurisdiction of the Ad-

^k Pasch. 9 Car. ^l Sup. li. 3. c. 2, 3, 4. &c.

miralty or not; as in the first of these five last cited Consultations concerning the building of a Ship, the question was not whether the contracts for the wages in building of her, or the materials bought and imployed upon her, the meat and drink bought and spent in the time of the building of her were made at land or not, or whether the Ship herself was built at land or at sea; for the case was plain in the one as well as in the other, that the Ship was built at land as all Ships are upon the Stocks, is no doubt at all: And the Ship being there built, it is as little doubt that the contracts were there made, unless we will suppose that which is not to be supposed, *viz.* that the parties went to sea to bargain for the building of her at land, and to bargain for materials to build her with, and for meat and drink to be spent in the time of the works being in hand; but the question was, whether these contracts concerned a business that was maritime or not, which did arise from somewhat to be done at or by sea, or not; and it being plain, that had it not been for sea employment, none of these contracts had been made. And therefore was it adjudged that these contracts did arise from businesses to be done at sea, and were therefore maritime, and belonged unto the maritime Jurisdiction of the Admiralty, as all other contracts for victualling, tackling, and furnishing of Ships, with either Anchors, Cables, or other Ropes, or whatsoever other necessaries, (although the same were contracted for and bought at land) anciently were and did belong, and of right still are, and do belong.

And as for the Contracts and Charter-parties made of letting Ships to freight, it is sure enough that they are seldom or never made but at land; yet are these contracts made of and concerning a Ship which,

which, at the very time of the making thereof, is, *Aut super mare fluctuans, aut ad Anchoras in quovis portu natans infra fluxum et refluxum maris infra Jurisdictionem Admirallitatis*, either sailing upon the Seas, or lying at Anchor in some Port or Haven, where the Sea ebberh and floweth within the Jurisdiction of the Admiralty. And these contracts do arise from businesses to be done at sea, and were therefore adjudged to belong unto the Sea Jurisdiction.

But perhaps it may be still objected that the Law doth allow a fiction of place for the doing of any thing, and it mattereth not whether the thing was there done or not; and I do agree that the Law doth allow such a fiction, so that the same be within the compass of a Possibility. But to feign a thing impossible, as to feign that Ships sail in *Cheapside*, or elsewhere upon the dry land, the Law abhorreth, as I have said before.

And then it is more proper and more agreeable to law to feign the Charter-party that was made at land to have been at sea, which is possible, than it is to feign a Ship to be at land, where the Contract was made, or when she was laden or furnished with either victual, tackle, or any other manner of provision or furniture, which is impossible.

I shall instance only in one Contract made beyond the seas concerning sea affairs, upon which a Bill obligatory was taken for the payment of a certain sum of money, and the said Bill obligatory was adjudged cognoscible in the Admiralty Court, and then proceed upon another argument; and this appeareth by a Consultation granted out of the Court of Common Pleas in the tenth year of

^m Sup. li. 3. cap.

King James (Sir Edward Coke himself being then Lord Chief Justice of the Court) directed unto Sir Daniel Dunn Knight and Doctor of Laws,

Thomas Alport libelled in the Admiralty Court against Philip Cooper, that in the Months of January, etc. Anno 1609, and in the Months of March, April, etc. the said Philip Cooper remaining in the parts beyond the seas, etc. did by his Bill obligatory in the said parts beyond the seas, etc. lawfully make, and with his own proper hand subscribed, and sealed with his Seal, tie and bind himself to the said Thomas Alport for the due payment of the sum of 275 l. and six shillings of lawful money of England, as in the said Libel in the said Consultation is summed up, viz.

Quod mens. Jan. etc. Anno Dom. 1609. nec non mensibus Martii, Aprilis, etc. 1610. seu eorum aliquo, predictus Philippus Cooper, dum partibus ultramarinis, etc. remanebat, se pro debita solutione summe ducentarum septuaginta quinque librarum et sex solidorum legalis monete Angliæ prefato Thomæ Alport per scriptum suum obligat. in partibus ultramarinis, etc. legitime factum, manuque sua propria subscript. ejusque sigillo, etc.

But the said Philip Cooper suggested in the Court of Common Pleas, as in the said Consultation is set forth; *Quod tertio die Aprilis anno Regni Jacobi Dei gratia Angliæ, etc. septimo infra corpus Comitatus Civitatis London, viz. in Parochia Beatæ Mariæ de Arcubus in Warda de Cheap, et non super altum mare, nec infra Jurisdictionem Curie Admirallitatis Angliæ per quandam villam suam obligatoriam sigillo suo sigillat. et ut factum suum cuidam Thomæ Alport tunc et ibidem deliberat. gerens datum eodem die et anno obligasset se et Heredes, Executores, et Administratores suos, ad solvendum prefato Thomæ, Heredibus, Executo-*
ribus

ribus et Administratoribus suis ad omnia tempora super demand. summam ducentarum septuagint. et quinque librarum et sex solidarum legalis monete Angliæ; cumque idem Philippus liber homo, etc. And reciteth the said three before mentioned Statutes. *Predictus tamen Thomas premissorum non ignarus, sed machinans non solum ipsum Philippum contra debitam legis hujus regni Angliæ formam, et contra formam et effectum statutorum, etc. tranxit in placitum falsè, cautè et subdolè libellando in Curia Admirallitatis, etc. cujus quidem suggestionis preteritu, etc.*

That upon the 3d of April 7 Jacobi within the body of the County of London, viz. in the Parish of St. Mary le Bow, in the Ward le Cheap, and not upon the high Sea, nor within the Jurisdiction of the Admiralty Court of England, he by his certain Bill obligatory, sealed with his seal as his deed, then and there delivered unto one Thomas Alpert, bearing date the same day and year, did bind himself, his Heirs, etc. to pay unto the said Thomas, his Heirs, etc. at any time upon demand, the sum of 275 l. and 6 s. of lawful money of England, and alledgeth the three before mentioned Statutes, and that notwithstanding the said Thomas not being ignorant thereof, etc. had brought his Suit in the Admiralty Court for the recovery of the said debt upon the said Bill obligatory, contrary to the form of the Law of England, and contrary to the form of the said Statutes, and thereupon obtained a Prohibition.

But upon the twentieth day of June, in the tenth year of King James, it being made appear by the Libel and Bill obligatory, that the same was made beyond the seas in respect of a Maritime business had and done at sea, the said Prohibition was released by consultation, which concludeth that

that the Prohibition was to the grievous damage of the said *Thomas Alport*, and manifest wrong of the Court of the Admiralty, and saith the proceedings in that cause in the said Admiralty Court ought not to be delayed. *Et quia videtur præfatis Judicariis, et pro certis causis ipsos specialiter moventibus, quod processus in prædicta Curia Admiralitatis in prædicta causa ad prosecutionem prædicti Thomæ ulterius retardari non debet; ideo vobis, etc. T. E. Coke apud Westm. xx die Junii, Anno Domini nostri Angliæ, Franciæ, et Hiberniæ decimo, et Scotiæ quadragesimo quinto.*

Crompton.

But it may be said that many more Prohibitions have been granted out of both the said Courts at *Westminster*, as well in causes of this nature, as in causes for things done upon Ports and Havens, upon which Consultations have not been had, and I doubt not but in latter times there have; but it hath for the most part been when the parties have agreed, and the cause compounded, and so no consultation prayed or sought for; if otherwise, let no man brag of that which hath been done, which ought not to be done. But another cause may be given, and that is this, that the Civilian not being suffered there to plead the right of Jurisdiction belonging to the Admiralty, the same hath not been undertaken by any Practicers in those Courts, and if undertaken, yet pleaded but coldly against the Jurisdiction of their own Courts: However I do conceive that the *Procedendo's* out of the Chancery, and the consultations out of the King's Bench and Common Pleas, which I have in this and the second Book of this Treatise set forth (though I might have instanced in very many more) will be sufficient to determine the right

right of Jurisdiction as well in causes of the one nature, as of the other against the said several Courts from whence such *Superfedeas's* and *Prohibitions* were granted.

I will not say but that the Admiralty Court may sometime have intermeddled with Contracts made at land, arising from businesses done or to be done or performed at land, which is here in *England*, as it were to take Cattle from a Pasture, and put into the sea to feed. And in such cases I doubt not but a Prohibition may lie, which shall not be dissolved by Consultation.

But by Prohibitions to take businesses of the Ports and Havens, or Contracts made at land concerning Maritime Affairs from the Admiralty, to be determined by the Common Law of the land, is to take fish out of the sea to be kept alive and fed upon pasture, or in some Forrest or Park at Hand.

For I shall in the next Chapter out of many shew you some few of those exact Rules the Civil Law hath to proceed by in causes of this nature, besides the Laws I have before mentioned, which the Common Law hath not.

C H A P.

C H A P. X.

That divers and several of the Laws under the titles selected out of the body of the Civil Law by Peckius for determination of Maritime Causes; and other Laws selected out of several other titles, as subsidiary unto them, do set forth most exactly the determination of Controversies, which may and do daily arise from Contracts made at land concerning matters to be done at sea.

NOW concerning this matter I may rather refer the Reader unto *Peckius* himself, *Vinnius*, and other Authors writing thereon, than to spend any great labour about it: but whilst he hath this book in his hand, let him cast his eye upon some few of a great number of such Contracts made at land, concerning businesses to be done at sea, which are exactly determined by these Laws, and are used and held absolutely necessary in all foreign Maritime Judicatories (and not by any the rules of their Municipal Laws) which as they are little or nothing different in their proceedings from the proceedings of the Civil Law, so are they far less different in their determinations from the determinations of that Law, than our Municipal Laws be.

As in the first of these Titles.

If Mariners before they receive goods on board, do contract with the Loader, *ut recepta restituant.*

Queritur utrum Nauta an Exercitor navis pro restitutione conveniatur?

Queritur

Queritur etiam an Exercitor, Magister, aut Nauta ex contractu teneatur de rebus non ostensis; ac utrum amicus ex contractu amicum in navem recipiens teneatur de perditione?

Queritur etiam utrum nauta ex sola emissionem teneatur? Ac etiam an nauta de facto vectorum teneatur?

Queritur etiam quæ et quando actio detur subsidiaria, protestatio an requirat consensum adversarii; ac an in scriptis fieri debet? Quænamque sit vis potestationis? Cum quolibet nautarum sit contractum, an detur actio in exercitorem? Ac quid si nauta per Magistrum navis conductus in nave deliquerit ac in exercitorem detur actio? Magister navis per exercitorem conductus, an alium substituere potest? Mutuum dans in navis usum, an ceteris creditoribus præfertur? et quando? et quare? an? et quando navis per aversionem conducitur?

Dominus an? et quando? et quare? invitus et ignorans de peculio teneatur? Merces an pro naulo contracto cum magistro sint obligata?

Queritur etiam quando argumentum à contractibus ad delicta procedat? quando non? quæ autem diversitatis sit ratio, quam optime declarat Ulpianus.

Varie etiam quæstiones assurgunt ex variis navium conducendarum modis contractis; ut de navibus locandis, varia sunt diversorum hominum studia, alius conducendis tantum vectoribus, alius ob naulum mercibus transferendis, alius ex longinquis Regionibus aromatis abducendis intentus est. Ex quibus quidem variis locationum modis contractis variae sunt quæstiones.

Quidam iterum cum navibus suis navigare velint, quidam tamen cum rebus suis ipsi superesse non possint, magistrum navis præficiunt; et ex ea ratione iterum
aliæ

aliæ omnes duplicantur et quæstiones et determinationes earundem.

Utrum conductæ nave per aversionem, avertitur a conductore periculum, et quando in locatorem rejicitur cum aliis quæstionibus de conductione per aversionem.

Si plures per contractum suum navem exerceant, an cum quolibet eorum in solidum agi potest.

Si navis lacera sit et inde res deterioratæ; an, et quando, vector ex locato contra magistrum agit?

Queritur etiam an, et quando, pro pecuniis mutuo pro reparatione navis sumendis aut aliter in ejus usum disponendis, in exercitorem detur actio et quanam detur actio?

Quamplurimæ etiam sunt leges diversis in titulis per totum Juris Civilis corpus distentæ et diffusæ, quæ (ut flores ex borto amani et salutiferi) hisce selectis ut eisdem subsidiariæ per authores super ipsis conscribentes, et alios colliguntur, ad causarum hujus naturæ maritimarum determinationes necessariæ, e quibus quamplurimis, qui legit perpauca hic tantum nominatas, alias excogitabit, ex quibus has varias nominatas habeat et tantum nominatas.

1. Queritur an nave emptæ, vel emptis navis tabulis, et navis pars, vel tabulæ, vel tabularum pars evincitur, an evictionis nomine obligetur, an præpositus navis teneatur? Quod per L. hoc edictum § si de navi venditor.

Quod ut speciale est, specialiter disputatur, solvitur et determinatur per L. nave aut, Et L. si dictum. junctis ibidem glossis, F. de evictionibus. Et per Doctores separales super eisdem conscribentes.

2. Iterum queritur cum contrahitur ad merces transportandum et non ex jactu, sed aliter, quædam de eisdem dejectæ fuerint merces è navi. ff. de his qui dejecerunt vel effuderunt dirimitur.

Queritur etiam an contra nautas pro rebus positis et transferendis contract. aut deperditis aut damnificatis

nificatis in navi, talem esse præsumptionem quæ in eos probandi onus transfert, quod per Angelum Aretinum super §. si tamen alienum. Instit. de rerum divis. deceptatur et concluditur.

3. Ac etiam an literæ mercatorum in quibus asseritur ita esse cum navis magistro contractum, et tantum pro naulo, etc. Se sibi sive navis proprietariis debere contra scribentem probent et obligationem inducant, quod accurate distinguendo deciditur per doctores super L. ff. de verborum obl. et L. Lucius ff. de Instit. act. et L. Publia. §. si. ff. depositi.

4. Sed ubi probent, etc. quid si mercator ante solutionem perierit sive decesserit, an scribentis hæredibus istæ nocebunt literæ? quod per Hypolit. de marsel. in singulari suo 373. incipiente ut nostri, et in repetitione sua super Rubrica Cod. de probationibus Col. 51. et Guliel. Durant. in suo Juris speculo tit. de obligat. et solution. in §. notand. vers. pone quod mercator. et Bald. in additionibus ibidem cum multis aliis dubitationibus, etc.

5. Multi mercatores frumenta sua in navem quandam posuerunt, et magister ad transferendum accepit, et communem fecit acervum, conveniendo ut ex illo acervo cuilibet redderetur tanta quantitas quantam ibi transferendam posuit. Et cum portum destinatum appulisset, navis ex illis quibusdam reddidit portiones, antequam aliis redderet, periit cum frumento.

Queritur an nautæ sit periculum? an mereatoribus qui portiones suas non recepissent? an mercatoribus omnibus conjunctim?

Quæ quidem quæstio exacte determinatur per L. in navem Saufei ff. locati et conducti et Gloss. ibidem et D. D. super ead. L.

6. Cum navis magistro contrahitur ad transferendum tanti ponderis merces, et saccus seu capsula inter alia in navi posita est sigillata, et redditur sine sigillo aperta, qui tradidit dicit tanta vel talia fuisse inclusa;

clusa; nauta contendit quod tanti ponderis non erat capsula. *ff. de iur. iur. l. 1. §. 1. ff. de iur. iur. l. 1. §. 1.*

Queritur quomodo procedendum est, ut ad directam deveniatur adjudicationem? quod per Iulium Ferretum li. suo primo n. 133. dirimitur. Vide etiam L. 1. naut. caup. Stab. ff. et arg. legis de actione, in litem jurando ff. de furtis. Et legi in actionibus §. fin. ff. de pollicitationibus.

Quid si quis ignorante navis magistro capsam in navem posuerit clavatam, quæ in eadem inventa fuerit aperta, et bona quedam ex eadem auferuntur?

Queritur an de damno ita ponenti teneatur magister? quod per Loffredum de Benevento Doctorem antiquum in L. 1. ff. depositi et per Baldum in L. 1. §. Item Pomponius ff. naut. caup. eximitur.

7. Queritur etiam an Excambii litteræ revocari possint? quando possint? Quando non? Quod quidem per Bald. in rubr. de constitut. pecunia, in ult. col. et L. quidem ff. eadem col. penult. et per Romanum in singulari 474. et per L. Publia in fi. ff. depositi, et per Bart. ibidem, et alios scribes de institoria, distinguendo dirimitur.

8. Ac cum mercator vel campsor litteras Excambii pro Scholari sive aliquo alio scripserit, et effectus facultatibus lapsus erit priusquam presententur et solvantur dictæ litteræ, utrum Scholaris an campsoris periculo dictæ erunt litteræ? Quod et distinguendo, et limitando per Bald. in L. pro debite C. de bon. actor. Judi. possiden. et per Bart. in L. singularia col. 7. ff. probatur, et per Hypol. de Marsel. in repetitione sua rubric. de probat. in vers. 284. etc. et L. ubi quis ff. de constit. pecun. et per Bald. in quæst. incipiente statuto cavetur quod scenerator, etc.

Et quid si ante diem solvendi facultatibus lapsus fuerit primus Campsor qui litteras scripsit, quo intellecto, ille, cui litteræ diriguntur, solutionem negat,

an

an possit cogi? Quod discutitur, percuriose tractatur, et disceptatur per Sallie. in L. pro debito in fine C. de bonis author. Judi. possiden. et per Aug. Instit. de Except. et per Alexan. de Imol. in L. quæ dolis ff. solu. matrim.

10. Queritur etiam utrum literæ cambii paratam habeant executionem? quod etiam determinatur per Jasonem in L. eleganter ff. de conditionibus indebiti. quod etiam per Bald. consil. 60. lib. tertio, et text. in l. si ex cautiam, C. de non numerat. pecuniis, et Matthæus de affliet. in constit. causas pro magistro Justiciario Col. 6. Multæque aliæ hæc de re exsurgunt quæstiones quæ per jus civile et auctores super eodem conscribentes disceptantur et determinantur.

11. Si unus ex nautis mercator fuerit, vel ut mercator cum magistro navis contraxerit, et in mercibus suis in nave oneratis damnum passus est, utrum sibi tenebitur exercitor? quod per dict. Julium Ferret. d. li. 1. n. 38. expeditur.

12. Mulier prægnans cum navis magistro pro transportatione solvere contraxit quod nautis debitum erit, juxta L. hujus ff. qui potiores in pignore habeantur. Et postmodum mulier peperit in navi. Queritur an teneatur pro partu solvere nautum? quod per L. sed adde §. si quis mulierem ff. locati, et per Bartol. ibidem, et per L. hæc mori ff. qui potiores in pignore habeantur directe concluditur.

13. Queritur qua actione versutus conveniatur nauta qui navo ad navigandum conducitur, et versute res surripuit alienas. Et hoc quando vel ex navi alterius vel ex propria sua navi surripuerit? quæ per exactissimam Julii Feretti de re navali distinctionem juxta L. sed et ipsi ff. naut. camp. determinatur l. 1. n. 34.

Et utrum cum plures competant actiones et con-
tata siue electa una, ad aliam redire poterit actor?

Et

Et quid si ad diversa plures competant actiones ? quæ per L. quod in heredem ff. de tributoria actione, etc. dijudicantur.

14. *Per L. 3. ff. Naut. caup. Stab. et Gloss. ibidem de dolo lata levi et levissima culpa tenentur exercitores sive magister navis, et inde quæritur utrum idem sunt, vel unus pro alio ponatur, quod cum deciditur per L. 2. ad L. Rhod. de jactu et L. primam §. 2. naut. caup. ac etiam quid de illo statuendum qui stat in navi navigandi causa. Et cum per prædict. L. 3. naut. caup. determinatur, quod in casu naufragii in casu Pyratarum incurso, et in casu fortuito non tenetur exercitor.*

Quæritur utrum furtum et latrocinium sit inter casus fortuitos numerandum, et inter illos ponendum et computandum. Et quinam alii numerent casus fortuiti ; quæ dirimuntur per §. sed istæ Instit. de action. et §. 1. Instit. quibus recontrahitur obl. et L. 3. §. Item si servus ff. naut. caup. et per Angelum de Aretio super D. Loc.

Quæritur ex d. illa L. 3. Naut. caup. utrumne cessante legitima causa quicquid contingit de exactissima culpa tenebitur exercitor ; utpote si nauta exactissimam illam adhibuit diligentiam quam quilibet diligens adhibuisset exercitor, quod dirimitur per Bartol. in d. L. 3. ff. naut. caup. etc.

15. *Per legem primam et L. cum navarcarum C. de naviculariis li. 10. nauta cogatur navigare.*

Quæritur igitur an nauta teneatur ex jussu inimici navigare ? vel in sua navi recipere inimicum suum de jure ? quod ex Gloss. super D. L. 1. ff. nautæ caup. dirimitur.

Now have I not here rendered or set forth the determinations of these few questions which I have here nominated, they being not considerable without the rest, which taken altogether with their divisions, distinctions, decisions and determinations, would

would make by themselves a whole Tract *de jure Admirallitatis*, which would be a Book to little or no purpose, nor receive any welcome, unless this which is *de ejus Jurisdictione*, may first receive some entertainment, which how necessary and advantageous the same may redound unto this Kingdom, I shall leave to the consideration of him that hath or shall thoroughly read this Maritime Dicæologie.

This small Treatise which I have written in Vindication of the Jurisdiction of the Lord High Admiral of *England, etc.* I doubt not but will receive this Addition of Advantage, as to tend likewise to the vindication and clearing of the honour and reputation of those Reverend and Learned Judges of the Land (the two Lords Chief Justices, the Lord Chief Baron, and the rest of the then Judges their Associates, together with the Attorney-General) whose Judgments and Justice have been blemished, and unworthily aspersed by some of their own Profession, in saying those Reverend Judges were questioned in Parliament for setting their Hands unto an Agreement made, before his Majesty of blessed Memory *Charles the First*, between them his Judges of the Land, and Sir *Henry Martin* Judge then of his High Court of Admiralty, purporting in substance the matter of this Treatise.

It's true, I have heard that some of the Puisse Lawyers, and young Men of that Profession (sitting in the Long Parliament) would have attempted such an indiscreet and unparalleled Act; but by the gravity and wisdom of others more learned in that Profession than themselves, were dissuaded from it. Yet if they had, I doubt not but he that reads this Treatise, will find sufficient reasons to

justify their assent to that agreement, and that it contained nothing but what they might and ought to do, notwithstanding the Judgments of their Predecessors or Successors.

Others do not forbear or stick to say this Subscription to this Agreement was an extrajudicial Act, and so takes not the effect of a Law either to bind them or their Successors, as though the place and formality of sitting upon the Bench were of the essence of a true and just Opinion ; and the Judges being called and convened by special Summons before his Majesty, that their Judgments and Opinions there delivered in matters propounded, debated, and argued, were of less Force and Validity, and more extraneous to reason, than if they were judicially sitting.

Which is an Opinion that I cannot conceive any man of sound Judgment can adhere unto ; and therefore I shall conclude this Treatise with that Judgment given by those twelve Learned and Reverend Judges of the Land, with the consent of that famous Man Mr. Noy, his Majesty's Attorney-General.

Ex 511

8/8/16

At

At Whitehall 18 February, 1633.

P R E S E N T,

The KING'S MOST EXCELLENT MAJESTY,

The Lord Keeper,

And twenty-three Lords of the Council.

THIS day, his Majesty being present in Council, the Articles and Propositions for accommodating the differences concerning Prohibitions agreed unto and subsigned by all the Judges, and his Majesty's Attorney-General, were Read, and ordered to be entered in the Register of Council Causes, and the Original to remain in the Council Chest.

1. If Suit shall be Commenced in the Court of Admiralty upon Contracts made, or other things personally done beyond or upon the Seas, no Prohibition is to be awarded.

2. If Suit be before the Admiral for Freight or Mariners wages, or for the breach of Charter-parties for Voyages to be made beyond the Seas, tho' the Charter-parties happen to be made within the Realm; and though the Money be payable within the Realm, so as the Penalty be not demanded, a Prohibition is not to be granted; but if Suits be for the Penalty, or if the question be made whether the Charter-party were made or not, or whether the Plaintiff did release, or otherwise discharge the same within the Realm, that is to be tried in the King's Court at *Westminster*, and not in the King's Court of Admiralty, so that first it be denied upon Oath, that Charter-party was made, or a denial upon Oath tendered.

3. If

3. If Suit shall be in the Court of Admiralty for building, amending, saving, or necessary victualling of a Ship, against the Ship itself, and not against any party by Name, but such as for his interest makes himself a party, no Prohibition shall be granted, though this be done within the Realm.

4. Likewise the Admiral may enquire of and redress all annoyances and obstructions in all navigable Rivers beneath the first Bridges that are impediments to navigation, or passage to or from the Sea, and also try personal Contracts and Injuries there which concern Navigation upon the Sea, and no Prohibition is to be granted in such Causes.

5. If any be imprisoned and upon *Habeas Corpus*, if any of these be the cause of imprisonment, and that be so certified, the party shall be Remanded.

Signed,

Thomas Richardson,
Robert Heath,
Humphrey Davenport,
John Denham,
Richard Hutton,
William Jones,
George Croke,
Thomas Trevor,

George Vernon,
James Weston,
Robert Barkley,
Francis Crawley,
Henry Martin,
William Noy,
Ex^t. T. Meutys.

F I N I S.

E. J. J.

3/8/16